TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 3. ORIGINAL.

THE STATE OF WISCONSIN, PLAINTIFF,

vs.

THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, LOUISIANA.

AT LAW.

If it be true that the whole invention described in the original and No. 5027 was the bushing with a notch in the flange, the Commissioner of Patents had no jurisdiction to grant this re-issue 8759, and it is void.

If re-issue 5027 was inoperative or void by reason of an insufficient or defective specification, this did not arise by inadvertence, accident or mistake, but through an error in judgment.

Appellant, in his bill (Record, p. 4), states that on taking re-issue 5027 he was advised and believed that the claim of that re-issue covered a bushing without a notch in the flange. If this be taken as true, then the claim of that re-issue was deliberately and advisedly framed to cover bushings either with or without the notch in the flange. If the claim was not broad enough to cover bushings without the notch, this was because of an error in judgment, and cannot be cured by re-issue. "In a clear case of mistake—not error in judgment—the patent may undoubtedly be enlarged," etc.

Mfg Co. vs. Ladd, 102 U. S., 411.

The long delay is fatal to this re-issue.

No excuse for this delay is given except advice of counsel that re-issue 5027 covered the bushing as well without as with the notch.

It is incredible that any patent counsel could be found who would give such advice with *Vance vs. Campbell* staring him in the face. But if such advice was given to appellant, is it a valid excuse for a delay of seven years?

Respectfully submitted.

GEO. H. LOTHROP,
Counsel for Appellee

127-263

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

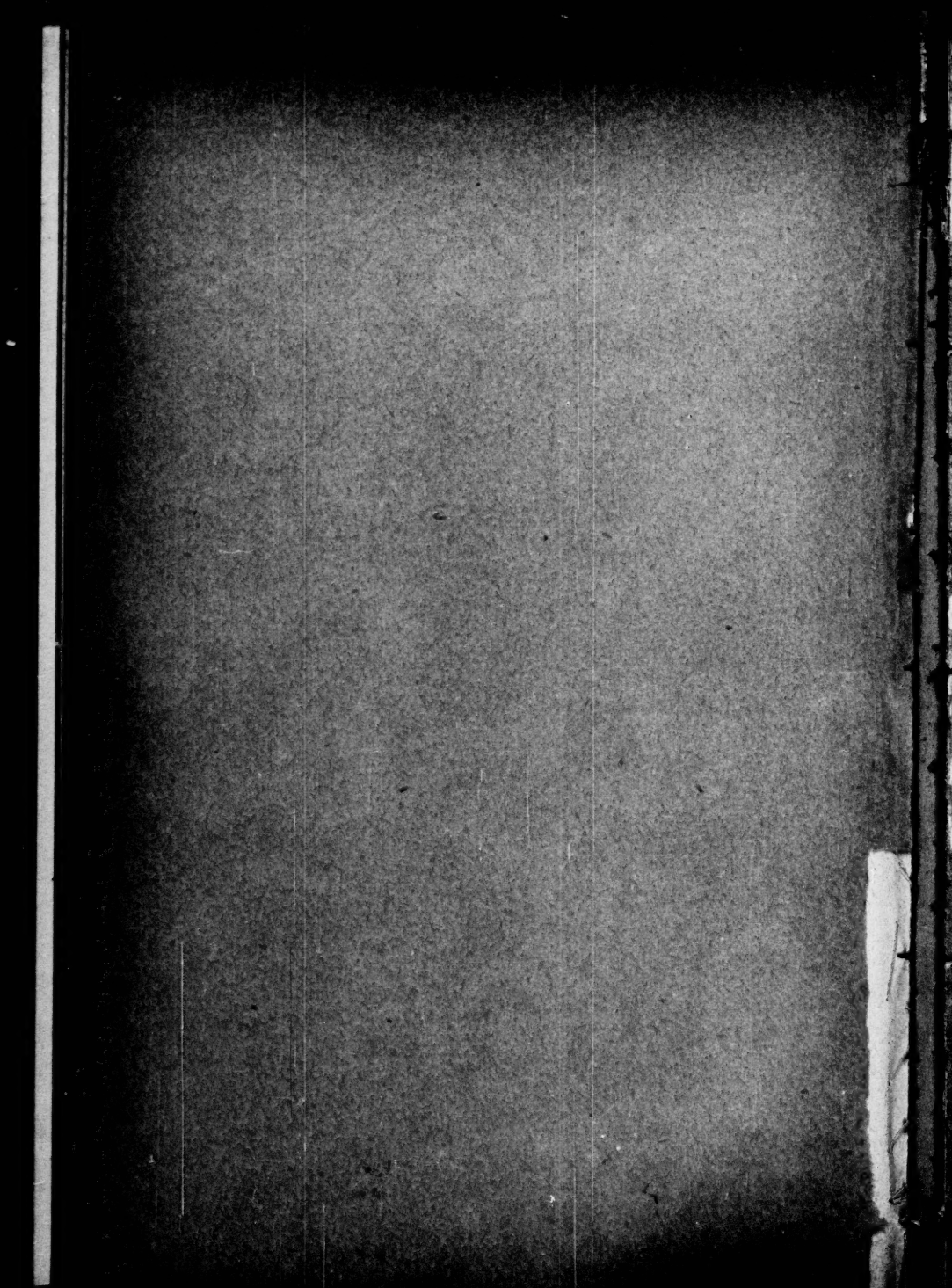
No. 6. ORIGINAL.

THE STATE OF WISCONSIN, PLAINTIFF,

vs.

THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, LOUISIANA.

AT LAW.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 6. ORIGINAL.

THE STATE OF WISCONSIN, PLAINTIFF,

vs.

THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, LOUISIANA.

AT LAW.

INDEX.

	Original.	Print.
Motion for leave to file declaration, &c.	1	1
Order granting leave to file declaration, &c.	2	1
Declaration	3	1
Summons	13	9
Marshal's return	14	9
Defendant's pleas	17	10
Additional plea of defendant	26	13
Demurrer and replication to certain pleas	31	15
Demurrer to additional plea	36	16
Joinder in demurrers and in issue	39	17
Motion for leave to withdraw demurrers, &c.	41	17
Order granting leave to withdraw demurrers, &c.	43	18
Replication of plaintiff	45	18
Defendant's rejoinder	63	22
Motion and consent to waive jury, for order as to taking testimony, and as to hearing	65	22
Order assigning demurrer for hearing, &c.	68	23

JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 In the Supreme Court of the United States.

THE STATE OF WISCONSIN
vs.
THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, LOUISIANA.

And now comes the plaintiff, The State of Wisconsin, one of the States of the United States, and moves the Court for leave to file the declaration hereunto annexed against the Pelican Insurance Company of New Orleans, Louisiana, a corporation of the State of Louisiana, defendant, and for process against said defendant, returnable as the Court may direct.

S. SHELLABARGER,
J. M. WILSON,
H. W. CHYNOWETH,
Att'ys of Plaintiff.

(Endorsed:) Supreme Court U. S. 1886, October term. No. 6. Orig'l. The State of Wisconsin, plaintiff, *vs.* The Pelican Insurance Company of New Orleans. Motion for leave to file declaration and for process to issue. Filed Nov. 23, 1886.

2 And afterwards, to wit, on the 6th day of December, A. D. 1886, the following entry appears of record, viz:

Order Granting Leave to File Declaration and Awarding Summons.

THE STATE OF WISCONSIN, Plaintiff,
vs.
THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, LA.

On consideration of the motion of Mr. Samuel Shellabarger, it is ordered that leave be, and the same is hereby, granted to enter and prosecute this cause as an original action in this Court, and that a summons issue, returnable on the 24th day of January, 1887, and requiring the defendant to plead or demurr to the declaration on or before the 28th day of February, 1887. Every Monday thereafter shall be a rule day until the issues are made up.

3 *Declaration in Debt.*

In the Supreme Court of the United States.

THE STATE OF WISCONSIN, Plaintiff,
vs.
THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, Defendant.

The plaintiff, The State of Wisconsin, and one of the States of the United States, now comes and complains of the defendant, The Pelican Insurance Company of New Orleans, a corporation duly organized and existing under the laws of the State of Louisiana, in a plea of debt—

For that, whereas the plaintiff, the said State of Wisconsin, on the 16th day of September, in the year 1886, at the county of Dane,

in the said State of Wisconsin, and in and before the Dane county circuit court, in said State—such court being then and there a court of general jurisdiction under the laws of said State—and by the consideration and judgment of the said court recovered against the said defendant, the said Pelican Insurance Company, a judgment in favor of the said plaintiff for the sum of eight thousand five hundred dollars damages, together with the further sum of forty-five dollars and thirty-nine cents for costs and disbursements, amounting in all to the sum of eight thousand five hundred and forty-five dollars and thirty-nine cents; which said judgment still remains in that court in full force and effect and not in anywise modified, reversed, set aside, appealed from, or otherwise vacated; and the said plaintiff, the said State of Wisconsin, hath not obtained any satisfaction upon the said judgment, but, on the contrary, the whole thereof, together with interest thereon from said date of such judgment, remains wholly unpaid and owing, whereby an action hath accrued unto the said plaintiff, the said State of Wisconsin, to demand and have from and of the said defendant the said sum of eight thousand five hundred and forty-five dollars and thirty-nine cents, with interest.

Wherefore the said plaintiff, the said State of Wisconsin, saith that the plaintiff is injured and hath sustained damage to the said amount of eight thousand five hundred and forty-five dollars and thirty-nine cents, with interest, and therefore it brings this suit.

S. SHELLABARGER,
J. M. WILSON,
H. W. CHYNOWETH,
Att'ys of Plaintiff.

4 State of Wisconsin, Circuit Court for Dane County.

THE STATE OF WISCONSIN, Plaintiff,

vs.

THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, LOUISIANA, Defendant.

The complaint of the above-named plaintiff respectfully shows to the court—

1st. That the defendant is and has been continually for the three years last past a fire insurance corporation, duly incorporated, created, organized, and existing under and by virtue of the laws of the State of Louisiana, and, as such fire insurance corporation, is and has been continually during the said three years last past engaged in the business of fire insurance, having its principal place of business and office in the said city of New Orleans, in the said State of Louisiana.

2d. That the defendant, as such fire insurance corporation, was, in the month of January, A. D. 1884, and has been continually each and every month since said month of January, A. D. 1884, down to and including the month of May, A. D. 1886, engaged in doing and carrying on the business of fire insurance in this State, in that it did issue and deliver in this State, in the said month of January, A. D.

1884, and has issued and delivered each and every month following the said month of January, A. D. 1884, down to and including the said month of June, A. D. 1886, policies of insurance to residents and citizens of this State, insuring such residents and citizens against loss by fire upon property situated in this State, and in that the said defendant has, in this State, during each and every month from and including the said month of January, A. D. 1884, down to and including the said month of June, A. D. 1886, collected and received premiums upon the said policies of insurance aforesaid.

3d. That neither the president and secretary nor the vice-president and secretary of the said defendant nor the defendant itself, nor either or any of them, nor did any person for them or either or any of them, in the month of January, A. D. 1884, or at any time since the said month of January, A. D. 1884, prepare or deposit in the office of the commissioner of insurance for this State a statement verified by their oaths or the oaths of any or either of them of the business of the said defendant corporation during the year 1883; and that the president and secretary and the vice-president and secretary of the said defendant, and the said defendant itself, and each and all of them, neglected and failed, in the month of January, 1884, and they and each of them and all of them have ever since failed and neglected, to prepare and deposit in the office of the commissioner of insurance in this State the annual statement required of them, the said president and secretary or the said vice-president and secretary of the said defendant, to be prepared and deposited in the said office of the said commissioner of insurance, under and by virtue of the provision of section 1920 of the Revised Statutes of this State, chapter 89, for the year A. D. 1878, and have during all of the said time neglected and failed, and still do neglect and fail, to prepare and deposit said annual statement or any statement whatever in the said office of the commissioner of insurance, and that no statement of any kind whatever was, in the month of January, A. D. 1884, or has been since said month of January, A. D. 1884, deposited in said office of the commissioner of insurance as aforesaid by the said defendant, or by any officer or officers thereof, or by any agent or agents thereof, or by any person or persons in its behalf, or the behalf of any officer or officers or agent or agents thereof.

Whereby the defendant has become and still is indebted to the plaintiff in the sum of fifteen thousand dollars, according to the provision of section 1920, chapter 89, of the Revised Statutes of this State for the year A. D. 1878.

Wherefore the plaintiff demands judgment against the defendant for said sum of fifteen thousand dollars, together with its costs and disbursements in this action.

H. W. CHYNOWETH,
Plaintiff's Attorney, Madison, Wis.

6 State of Wisconsin, Circuit Court for Dane County.

THE STATE OF WISCONSIN, Plaintiff,

vs.

THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, Defendant.

The State of Wisconsin to the said defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid, and in case of your failure so to do judgment will be rendered against you according to the demand of the complaint.

H. W. CHYNOWETH,
Plaintiff's Attorney.

P. O. address, Madison, Dane county, Wisconsin.

STATE OF WISCONSIN, } *ss:*
Winnebago County, }

I hereby certify that I did, at the city of Oshkosh, county and State aforesaid, on the 19th day of June, A. D. 1886, serve the within summons upon the within-named defendant personally by then and there delivering to and leaving with David Lawson, a resident and citizen of this State, personally, he, the said Lawson, being then and there an agent of the said defendant, a true copy thereof, with the date of service duly indorsed on said copy.

F. BURGESS,
Sheriff, Winnebago County, Wisconsin.

Fees:

Services (2)	$1 50
Copies	40
Travel	40
	$2 30

STATE OF WISCONSIN, } *ss:*
Winnebago County, }

7 I hereby certify that I did, at the city of Oshkosh, county and State aforesaid, on the 19th day of June, A. D. 1886, serve the within summons upon the within-named defendant personally by then and there delivering to and leaving with L. D. Harmon, a resident and citizen of this State, personally, he, the said L. D. Harmon, being then and there an agent of the said defendant, a true copy thereof, with the date of service duly indorsed on said copy.

E. BURGESS,
Sheriff, Winnebago County, Wisconsin.

CHIPPEWA COUNTY, *ss:*

SHERIFF'S OFFICE.

I hereby certify that I did, at the city of Chippewa Falls, county and State aforesaid, on the 24th day of June, A. D. 1886, serve the

within summons upon the within-named defendant personally b then and there delivering to and leaving with H. H. Todd, a resident and citizen of this State, personally, he, the said H. H. Todd, being then and there an agent of the said defendant, a true copy thereof, with the date of service duly indorsed on said copy.

JOHN WEINER,
Sheriff of Chippewa County, Wisconsin,
By JOHN P. DIPPEL,
Deputy Sheriff.

Fees:

Service	$1 00
Travel	20
Copy	20
	$1 40

STATE OF WISCONSIN, } ss:
Dane County, }

State of Wisconsin, Circuit Court for Dane County.

THE STATE OF WISCONSIN, Plaintiff,
vs.
THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, Defendant.

H. W. Chynoweth, being duly sworn, upon his oath deposes
8 and says that he is the attorney for the plaintiff in this cause; that the summons herein was duly and personally served upon the defendant on the 19th day of June, A. D. 1886, as more fully appears by the certificate of return of the sheriff of Winnebago county indorsed upon the back of said summons, now on file in the office of the clerk of this court; which said certificate of return is as follows:

"STATE OF WISCONSIN, } ss:
Winnebago County, }

"I hereby certify that I did, at the city of Oshkosh, county and State aforesaid, on the 19th day of June, A. D. 1886, serve the within summons upon the within-named defendant personally by then and there delivering to and leaving with David Lawson, a resident and citizen of this State, personally, he, the said Lawson, being then and there an agent of the said defendant, a true copy thereof, with the date of service duly endorsed on said copy.

"F. BURGESS,
"*Sheriff, Winnebago County, Wisconsin.*"

Deponent further says that the said summons was again personally served upon the said defendant, and duly so, on the said 19th day of June, A. D. 1886, as appears more fully by the certificate of return of the said sheriff of Winnebago county attached to said summons; which said certificate is now on file in the office of the clerk of this court as follows:

"STATE OF WISCONSIN, } ss:
Winnebago County, }

"I hereby certify that I did, at the city of Oshkosh, county and State aforesaid, on the 19th day of June, A. D. 1886, serve the within summons upon the within-named defendant personally by then and there delivering to and leaving with L. D. Harmon, a resident and citizen of this State, personally, he, the said L. D. Harmon, being then and there an agent of said defendant, a true copy thereof, with the date of service duly endorsed upon said copy.

"F. BURGESS,
"*Sheriff, Winnebago County.*"

Deponent further says that said summons was again duly
9 and personally served upon said defendant on the 24th day of June, A. D. 1886, as more fully appears by the return of the sheriff of Chippewa county, attached to said summons, now on file in the office of the clerk of this court; which return is as follows:

"CHIPPEWA COUNTY, *ss:*

"SHERIFF'S OFFICE.

"I hereby certify that I did, at the city of Chippewa Falls, county and State aforesaid, on the 24th day of June, A. D. 1886, serve the within summons upon the within-named defendant personally by then and there delivering to and leaving with H. H. Todd, a resident and citizen of this State, personally, he, the said H. H. Todd, being then and there an agent of the said defendant, a true copy thereof, with the date of service duly endorsed upon said copy.

"JOHN WEINER,
"*Sheriff, Chippewa County, Wisconsin,*
"By JOHN D. DEPELL,
"*Deputy Sheriff.*"

That more than twenty days have elapsed since said service of said summons as aforesaid; that defendant has not served, neither has plaintiff's attorney received, any notice of appearance or appearances, neither any notice of retainer, answer, or demurrer in said cause, and said defendant is wholly in default therein.

H. W. CHYNOWETH.

Sworn to and subscribed before me this 4th day of August, A. D. 1886.

FRANK E. PARKINSON,
Notary Public, Dane County, Wisconsin.

State of Wisconsin, in Dane County Circuit Court.

THE STATE OF WISCONSIN, Plaintiff,

vs.

THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, LOUISIANA, Defendant.

It appearing by due proof now on file in the office of the
10 clerk of this court that the summons herein was duly and personally served upon the defendant at the city of Oshkosh, in the county of Winnebago, State of Wisconsin, on the 19th day of June, A. D. 1886, and also at the city of Oshkosh, Winnebago county, Wisconsin, on the 19th day of June, A. D. 1886, and also at the city of Chippewa Falls, Chippewa county, Wisconsin, on the 24th day of June, A. D. 1886; and it appearing that more than twenty days have elapsed since said service of said summons, and that no answer, demurrer, notice of retainer, or appearance has ever been served or received in this action, and that the defendant is in default herein; and it further appearing to me by due proof offered by the plaintiff and received in open court, at a general term of said court begun and held at the court-room, in the city of Madison, Dane county, Wisconsin, on the second Tuesday of July, A. D. 1886, and it being on a day of said general term of court to which said general term of court had been duly adjourned, to wit, upon the 16th day of September, A. D. 1886, that the defendant is indebted to the plaintiff in the sum of eight thousand five hundred dollars damages:

Now, therefore, on motion of H. W. Chynoweth, plaintiff's attorney, it is ordered and directed that The State of Wisconsin, the plaintiff, do have and recover of and from The Pelican Insurance Company of New Orleans, Louisiana, the defendant, the sum of eight thousand five hundred dollars damages, besides the costs and disbursements in this action.

Let judgment be entered accordingly, with costs.

Dated September 16th, A. D. 1886.

By the court:

ALVA STEWART, *Judge.*

State of Wisconsin, in Circuit Court Dane County.

THE STATE OF WISCONSIN, Plaintiff,

vs.

THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, LOUISIANA, Defendant.

It appearing by due proof now on file in the office of the
11 clerk of this court that the summons herein was duly and personally served upon the defendant at the city of Oshkosh, county of Winnebago, State of Wisconsin, on the 19th day of June, A. D. 1886, and also at the city of Oshkosh, county of Winnebago, and State of Wisconsin, on the 19th day of June, A. D. 1886, and also at the city of Chippewa Falls, Chippewa county, Wisconsin, on the 24th day of June, A. D. 1886, and it appearing that more than

twenty days have elapsed since said service of said summons as aforesaid, and that no answer, demurrer, notice of retainer, or appearance has ever been served or received in said action:

Now, therefore, on motion of H. W. Chynoweth, plaintiff's attorney, and upon the order and direction of the court upon due proof offered by the plaintiff and received in open court, it is adjudged that The State of Wisconsin, the plaintiff, do have and recover from The Pelican Insurance Company of New Orleans, Louisiana, the defendant, the sum of eight thousand five hundred dollars damages, together with the further sum of forty-five and $\frac{39}{100}$ dollars for costs and disbursements, amounting in all to the sum of eight thousand five hundred and forty-five and $\frac{39}{100}$ dollars.

Dated September 16th, 1886.

S. H. BUTLER, *Clerk.*

DANE COUNTY, *ss:*

State of Wisconsin, in Circuit Court for Dane County.

I, S. H. Butler, clerk of the circuit court in and for the county of Dane and State of Wisconsin, do hereby certify that I have carefuly compared the foregoing and annexed copy of judgment-roll with the original now on file and of record in my office, wherein The State of Wisconsin is plaintiff and The Pelican Insurance Company of New Orleans, Louisiana, is defendant, and that the same is a true and correct copy of said original and the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Madison, in said county, this 26th day of October, A. D. 1886.

[SEAL.] S. H. BUTLER, *Clerk.*

12 STATE OF WISCONSIN, } *ss:*
Dane County, }

I, Alva Stewart, circuit judge of the ninth judicial circuit of the State of Wisconsin and presiding judge of the circuit court for Dane county, in said ninth judicial circuit, do hereby certify that the foregoing attestation of S. H. Butler, clerk of said court, to the foregoing exemplification of judgment-roll is in due form; that the said S. H. Butler is the clerk of said court, duly elected and qualified and acting as such; that I am well acquainted with his handwriting, and that his signature to said attestation is genuine.

Witness my hand, at Madison, Wisconsin, this 27th day of October, A. D. 1886.

ALVA STEWART,
Circuit Judge of the Ninth Circuit of Wisconsin and Presiding Judge of the Circuit Court for Dane County.

(Endorsed:) Supreme Court U. S. 1886, October term. No. 6. Original. The State of Wisconsin, plaintiff, *vs.* The Pelican Insurance Company of New Orleans. Declaration. Filed December 10, 1886. James H. McKenney, clerk.

13 *Summons.*

[Seal of the Supreme Court U. S.]

The President of the United States of America to the marshal of the Supreme Court of the United States, Greeting:

You are hereby commanded that you summon the Pelican Insurance Company of New Orleans, Louisiana, to be and appear before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, on the 24th day of January, A. D. 1887, to answer unto the State of Wisconsin in a plea of debt for eight thousand five hundred and forty-five dollars and thirty-nine cents, with interest, as alleged, and do you then and there make due return of this writ.

14 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Washington, the 10th day of December, A. D. 1886, and of the Independence of the United States the one hundred and eleventh.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

SUPREME COURT U. S.,
MARSHAL'S OFFICE, *Dec.* 10, 1886.

I, John G. Nicolay, marshal of the Supreme Court of the United States, do hereby authorize and deputize R. B. Pleasants, United States marshal, to serve the foregoing summons and to make due return thereof.

JNO. G. NICOLAY, *Marshal.*

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

15 I, Reuben B. Pleasants, do hereby certify that I have, on this 13th day of December, 1886, served the foregoing summons by reading the same to John McCaffrey, president of the Pelican Insurance Company of New Orleans, Louisiana, and showing to him the seal thereof, and by delivering to the said John McCaffrey, president of the Pelican Insurance Company of New Orleans, a certified copy of the declaration and order accompanying the same, at the office of said Pelican Insurance Company of New Orleans, on Camp street near Natchez street, in the city of New Orleans, on this 13th December, 1886.

JOHN G. NICOLAY, *Marshal,*
By R. B. PLEASANTS,
U. S. Marshal of Eastern District of Louisiana and Deputy as Aforesaid.

16 (Endorsed:) Supreme Court U. S. October term, 1886. No. 6. Original. The State of Wisconsin, plaintiff, *v.* The Pelican Insurance Company of New Orleans, La. Summons and proof of service on John McCaffrey, president, &c. Filed December 16, 1886. James H. McKenney, clerk.

17 *Defendant's Pleas.*

Supreme Court of the U. S. October Term, 1886.

THE STATE OF WISCONSIN, Plaintiff,
vs.
THE PELICAN INSURANCE COMPANY OF THE CITY OF NEW ORLEANS, STATE OF LOUISIANA, Defendant.

I.

The defendant aforesaid appears by attorney, according to the summons of the Court, to make answer to the complaint filed in this Court by the plaintiff aforesaid.

The defendant is a civil corporation organized under the terms of the Revised Statutes of the State of Louisiana, sections 638 to 688, both inclusive, and is authorized to effect fire insurances, and is subject to suit and required to determine its domicil in the city aforesaid, and to maintain and designate an officer of that company to receive there citations and other judicial writs and notices. This duty has been fulfilled from the date of the organization, and the charter of the company has been recorded and published as those statutes require, in the office of the recorder of mortgages and a city paper for the time defined in the
18 statute. No other designation has been made or required of the defendant. The section six hundred and eighty-seven of the Revised Statutes of the United States defines the original jurisdiction of this Court, and designates as subjects for the exercise of that jurisdiction where a State is the complainant, citizens of States other than of the plaintiff or complainant, and that there should be no error on the subject the first section of the fourteenth amendment to the Constitution of the United States exactly describes all of those who are citizens. They are natural persons born or naturalized within the limits of the United States, and having a residence in any State determines the State in which he may have privilege or immunity as a citizen. Moreover, the complaint of the plaintiff discloses that this defendant is a fire insurance company, without political character or interstate relations, and had its origin and domicil in New Orleans, and that the said corporation had offended the State of Wisconsin by imputed and alleged disobedience or inattention to her statute laws, and had incurred heavy forfeitures and penalties by such offences to the sum stated in the demand, and for the collection of which fines and forfeitures this suit has been commenced in this court. But the defendant says that the statute of the United States above cited further defines the cause for the exercise of original jurisdiction that the controversy should be of a civil nature. It excludes from cognizance of this Court the punitive statutes and divers litigations arising out of the internal and peculiar or peevish regulations, accompanied with fines, forfeitures, and arbitrary exactions which a State may impose upon citizens or corporations of other States from a just cause, or from caprice or captiousness. The controversy must be of a civil nature

and not of the punitive nature, as shown by this record. Wherefore this defendant submits to this Court that the complaint of this plaintiff does not show a cause within the original jurisdiction of the Court, nor within the terms of the statutes of the United States.

19 II.

The said defendant, for further answer, says that the defendant, under the charter of the company, has always had its fixed and determined domicil within New Orleans, as its corporate name discloses, nor has this defendant any grant of privilege from the State of Wisconsin; that this company has habitually issued policies of insurance at its domicil in New Orleans, and all of the contracts made by it receive their validity and impose a binding obligation as imparted by the laws of Louisiana, and conform to those laws.

This defendant has not maintained at any place within Wisconsin any officer, appointee, or agent to receive citations, writs, — notice of the pendency of suits against it, nor accredited any person to answer to such procedure. This defendant avers that neither David Lawson, L. D. Harmon, nor H. H. Todd, persons named in the record served upon the defendant, with the summons to appear and answer the complaint of the plaintiff, were officers, agents, or employés of the defendant, and accredited by the defendant to receive the notices which appear in the record filed, nor any notices of any such description or object; nor were they entitled to do or to perform any matter or thing such as the plaintiff's attorney informs them they may do for the said defendant under the notices. This defendant avers that the said attorney was without any license, permission, or authority to address such notices to either of them so as to bind this defendant for any purpose whatsoever, and was destitute of any authority of law or in fact, on account of this defendant, to select those persons to receive notices for and on behalf of the said defendant.

This defendant avers that the circuit court of Dane county was wholly without authority to assume a jurisdiction over this defendant in the suit contained in the said record and described in the complaint of the plaintiff. The defendant had not been
20 served with notice of the pendency of the suit, nor was the defendant at any time subject to the jurisdiction of the said circuit court; that the notices to Lawson, Harmon, and Todd were nugatory and without any obligatory force or obligation to affect this defendant, a corporation of another State and commorant in that other State during the pendency of that suit. This defendant avers that the judgment has been procured by the act of the officers of the plaintiff and for the interest and emolument of the said plaintiff and her officers; that the defendant was not within the jurisdiction of the State nor of the court, and that there was no notice served on the defendant nor any legal notice of the cause, and that the court was not entitled to render judgment in the absence — and without such legal notice. This defendant did not appear to the

suit nor was represented in the cause. This the defendant is ready to verify, and prays that this suit be dismissed, and that the plaintiff be taxed with all of the costs.

JOHN A. CAMPBELL,
Defendant's Attorney.

Supreme Court of the United States. October Term, 1886.

THE STATE OF WISCONSIN
vs.
THE PELICAN INSURANCE COMPANY OF THE CITY OF NEW ORLEANS, LOUISIANA.

Additional pleas filed in the said cause in the said Court by the defendant 28th February, 1887, to the declaration of the plaintiff aforesaid.

JOHN A. CAMPBELL,
Attorney for Def't.

21 I.

The defendant avers that the plaintiff aforesaid has no just claim upon the defendant for a debt, as set forth in her declaration, and that the debt has no existence in the manner and form as set out in the said declaration, and doth further aver that there does not exist the records of the circuit court of Dane county, of the State of Wisconsin, such — the said plaintiff has alleged in her said declaration, and denies the allegations made in the said declaration in respect of any such record, and call- for the production of the said record, so that this Court may examine the same. And this the defendant is ready to verify. And because of the facts aforesaid the defendant prays the judgment of this Court that the defendant may go hence and the plaintiff be taxed with all of the costs of this cause.

22 II.

For a further plea in this behalf, the defendant says that, not confessing the truth of any matter alleged by the plaintiff in her declaration, — doth aver that the said plaintiff did procure to be entered in the circuit court of Dane county, in the State of Wisconsin, by her own officers and agents in this behalf, a judgment against this defendant for a sum corresponding to the sum set out in the declaration of the said plaintiff, filed in this court, and of the date of the sixteenth of September, 1886. This defendant avers that the judgment thus entered by the officers of the plaintiff in the record of the court was illegally, wrongfully, & fraudulently made, and is without any valid or binding operation, and is without effect, for that the

23 said defendant at that date was beyond the limits of the said State, to wit, in the State of Louisiana, and had never been served with any legal and valid process or notice, and was not at any time during the pendency of the proceedings of the plaintiff and the action and administration of the said circuit court in the matter of the rendition of the judgment by said circuit court of Dane

county, in the State of Wisconsin, nor was a party to the said proceedings or subject to the jurisdiction of the court, & that the said court was without any jurisdiction in the matter of the rendition of the said judgment. And the said defendant avers that the pretended service which the officers of the said plaintiff have caused to be placed on the records of that court in the absence of the said defendant was made upon citizens of the said plaintiff, who were not officers
24 of this defendant, nor agents of the defendant, no- entitled to accept service on behalf of this defendant, no- capable to bind this defendant, and were selected by the officers of the plaintiff without any knowledge or consent of this defendant, and for the purpose of giving a specious and delusive appearance of legality without the substance of the same. The defendant avers that neither L. D. Harmon, David Lawson, nor H. H. Todd were, at the date of the service, agents of the defendant, nor had any license, authority, nor right to receive the notices returned to the said court, and the said court made the said judgment without jurisdiction over the defendant, and without notice to the defendant of their wrongful and illegal exercise of jurisdiction. This the defendant is ready to verify.

25 Wherefore the defendant prays judgment of the cause, and that the same be dismissed from this Court and that the defendant have judgment for costs.

JOHN A. CAMPBELL.

(Endorsed:) Supreme Court U. S. 1886, October term. No. 6. Original. The State of Wisconsin, plaintiff, *vs.* The Pelican Insurance Co. of New Orleans. Defendant's pleas. Filed Feb. 28, 1887. James H. McKenney, clerk.

26 *Additional Plea of Defendant.*

Supreme Court of the United States.

THE STATE OF WISCONSIN
vs.
THE PELICAN INSURANCE COMPANY OF THE CITY OF NEW ORLEANS, LOUISIANA.

III.

For further answer to the complaint of the plaintiff, the defendant says that the said plaintiff demanded, in her circuit court of Dane county, a judgment against this defendant for a sum of money, consisting of penalties and forfeitures and amercements defined in the 1920 section, chapter ten (10), of the Revised Statutes of the State of Wisconsin, published by authority of the plaintiff in 1878, and in which demand the State accused the said defendant of having
27 violated the prohibitions in the said statute within that State, and the defendant says that the said demand was founded upon that accusation. At the date of the commencement of the suit for this demand the said plaintiff had full knowledge that the defendant had its only domicil and habitation within the city of New Orleans

and State of Louisiana, and issued policies of insurance there and not elsewhere. The plaintiff knew that the defendant derived its charter from the State of Louisiana, and had none from the plaintiff. This defendant had not, at the time of the commencement of this suit, any agent — attorney appointed competent or authorized to appear to any suit or action commenced by the said plain-
28 tiff in her courts for any cause, and had not invested any person with authority to receive citations, writs, or process of any sort, the object of which was to inform this defendant of the commencement of a suit, or to oblige this defendant to appear in or to defend the suits which the State had or might commence for any cause.

This defendant avers that neither David Lawson, L. D. Harmon, nor H. H. Todd had authority to receive citations, summons, or other process of any sort for the account of this defendant, nor to comply with the contents in its behalf, or to oblige this defendant to submit to the same. This defendant had never designated them as agents or accredited them to act in its stead, but that these
29 persons are citizens of Wisconsin, and neither of them an officer or agent of the defendant, but were selected by officers and agents of the plaintiff and to give an appearance of regularity, without the same being legal or authorized by the law or by the defendant, the aim seeming to be to prepare a suit for this Court. This defendant avers that it did not appear in the said circuit court of Dane county during the pendency of the said suit, by attorney or otherwise, nor was there any service of process conformably to law, and that the pretended service upon Lawson, Harmon, and Todd was nugatory and void. This defendant was all the time beyond the limits of the State and beyond the jurisdiction of the court and not answerable to the said court for the matters
30 set forth in the complaint made to the court.

Wherefore the defendant, for the causes set forth in the answers made to the plaintiff in this suit by this defendant, prays that the Court dismiss the said suit from the Court, and that the plaintiff pay the costs.

JOHN A. CAMPBELL,
Defendant's Attorney.

(Endorsed :) Sup. Court U. S. 1886, Oct'r term. No. 6. Original. The State of Wisconsin, plaintiff, *vs.* The Pelican Insurance Company of New Orleans. Additional plea of defendant. Filed Mar. 3, 1887. James H. McKenney, clerk.

31 *Demurrer of Plaintiff to First, Second, and Fourth Pleas of Defendant, and Replication to Third Plea.*

In the Supreme Court of the United States. October Term, 1886.

THE STATE OF WISCONSIN, Plaintiff,

vs.

THE PELICAN INSURANCE COMPANY OF THE CITY OF NEW ORLEANS, STATE OF LOUISIANA, Defendant.

And now comes the plaintiff in the above-entitled action, The State of Wisconsin, and as to the first answer and plea of the said defendant, The Pelican Insurance Company of the city of New Orleans, State of Louisiana, by said defendant first above answered and pleaded, saith that the same and the matters therein con-
32 tained, in manner and form as the same are pleaded and set forth, are not sufficient in law to bar or preclude it, the said State of Wisconsin, from having or maintaining its aforesaid action thereof against the said Pelican Insurance Company, defendant, and that the said State of Wisconsin is not bound by the law of the land to answer the same, and this it, the said State of Wisconsin, is ready to verify. Wherefore, for want of a sufficient plea or answer in this behalf, the said State of Wisconsin prays judgment and its damages by reason of the non-performance of the obligations in the said declaration mentioned, to be adjudged to the said plaintiff.

2. And the said State of Wisconsin, as to the second answer and plea by the said defendant, the said insurance company, secondly above pleaded, saith that the same and the matters therein
33 contained, in manner and form as the same are pleaded and set forth, are not sufficient in law to bar or preclude it, the said State of Wisconsin, from having or maintaining its aforesaid action thereof against the said Pelican Insurance Company, defendant, and that the said State of Wisconsin is not bound by the law of the land to answer the same, and this it, the said State of Wisconsin, is ready to verify. Wherefore, for want of sufficient plea or answer in this behalf, the said State of Wisconsin prays judgment and its damages by reason of the non-performance of the obligations in the said declaration mentioned, to be adjudged to the said plaintiff.

3. And the said plaintiff, the State of Wisconsin, as to the
34 second answer and plea of the said defendant, the said insurance company, as set forth in the additional pleas filed in the said cause by the said defendant, saith that the same and the matters therein contained, in manner and form as the same are pleaded and set forth, are not sufficient in law to bar or preclude it, the said State of Wisconsin, from having or maintaining its aforesaid action thereof against the said Pelican Insurance Company, defendant, and that the said State of Wisconsin is not bound by the law of the land to answer the same, and this it, the said State of Wisconsin, is ready to verify. Wherefore, for want of a sufficieut plea or answer in this

behalf, the said State of Wisconsin prays judgment and its
35 damages by reason of the non-performance of the obligations in the said declaration mentioned, to be adjudged to the said plaintiff.

4. And the said plaintiff, The State of Wisconsin, now comes and, as the first answer and plea set forth in the said additional pleas filed in the said case by the said defendant insurance company, joins issue upon said first plea in said additional pleas.

SAM'L SHELLABARGER &
J. M. WILSON,
Att'ys for Plaintiff.

(Endorsed:) Sup. Court U. S. 1886, Oct'r term. No. 6. Orig'l. The State of Wisconsin, plaintiff, *vs.* The Pelican Insurance Co. Demurrer of plaintiff to first, second, & fourth pleas of defendant, & replication to third. Filed Mar. 7, 1887.

36 *Demurrer of Plaintiff to Additional Plea. Filed Mar.* 3, 1887.

In the Supreme Court of the United States. October Term, 1886.

THE STATE OF WISCONSIN, Plaintiff,

v.

THE PELICAN INSURANCE COMPANY OF THE CITY OF NEW ORLEANS, STATE OF LOUISIANA, Defendant.

And now comes the plaintiff in the above-entitled action, The State of Wisconsin, and as to the further and third answer and plea of the said defendant, The Pelican Insurance Company of New Orleans, State of Louisiana, filed the 3d day of March, A. D. 1887,
saith that the same and the matters therein contained, in
37 manner and form as the same are pleaded and set forth, are not sufficient in law to bar or preclude it, the said State of Wisconsin, from having or maintaining its aforesaid action thereof against the said insurance company, defendant, and that the said State of Wisconsin is not bound by the law of the land to answer the same, and this it, the said State of Wisconsin, is ready to verify. Wherefore, for want of a sufficient plea or answer in this behalf, the said State of Wisconsin prays judgment and its damages by reason of the non-performing of the obligations in the said declaration mentioned, to be adjudged to the said plaintiff,

SAM'L SHELLABARGER &
J. M. WILSON,
Atty's for Plaintiff.

(Endorsed:) Sup. Court U. S. 1886, Oct'r term. No. 6.
38 Orig'l. The State of Wisconsin, plaintiff, *vs* The Pelican Insurance Co. of New Orleans. Demurrer of plaintiff to additional plea of defendant. Filed Mar. 7, 1887.

39 *Joinder in Demurrers and Joinder in Issue upon 3d Plea.*

Supreme Court of the United States. October Term, 1886.

THE STATE OF WISCONSIN
vs.
THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, LOUISIANA.

The said defendant, upon considering the demurrers of the said plaintiff to the answers of the defendant, affirms the validity and sufficiency of the said answers and submits the questions arising to the court for its judgment thereon.

The defendant joins in the issue on the plea made.

JOHN A. CAMPBELL,
Attorney for the Defendant.

40 (Endorsed:) Sup. Court. U. S. 1886, Oct. term. No. 6. Orig'l. State of Wisconsin, plaintiff, *vs.* The Pelican Insurance Co. Joinder in demurrers and joinder in issue upon 3rd plea. Filed Mar. 12 1887. James H. McKenney, clerk.

41 *Motion for Leave to Withdraw Demurrers and to File Replication.*

Supreme Court of the United States.

STATE OF WISCONSIN
v.
THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, STATE OF LOUISIANA.

Now comes the plaintiff in the above-entitled cause, The State of Wisconsin, by its attorneys, Shellabarger & Wilson, and moves the Court for leave to withdraw the demurrer of the plaintiff heretofore filed to plea numbered II of the defendant, first filed in the above-entitled cause, and also to withdraw the demurrer to plea numbered II, second filed in the above-entitled cause, and also to withdraw the demurrer to the third and last plea filed by the defend-
42 ant, and for leave to file replication to the said second plea, numbered II, first filed, and to plea numbered II, second filed, and to said plea numbered III, last filed.

SAMUEL SHELLABARGER.
J. M. WILSON.

(Endorsed:) Supreme Court U. S. 1886, October term. No. 6. Original. The State of Wisconsin, plaintiff, *vs.* The Pelican Insurance Co. Motion for leave to withdraw demurrers and to file replication. Filed March 21, 1887. James H. McKenney, clerk.

43 And on the same day, to wit, the 21st day of March, A. D. 1887, the following entry appears of record, viz:

Order Granting Leave to Withdraw Demurrers and File Replication.

THE STATE OF WISCONSIN, Plaintiff,
vs.
THE PELICAN INSURANCE COMPANY OF NEW ORLEANS. } No. 6. Original.

On motion of Mr. Samuel Shellabarger, of counsel for the plaintiff, leave is hereby granted the plaintiff to withdraw the demurrer to the plea numbered II of the defendant, first filed; the demurrer to the plea numbered II, second filed, and the demurrer to the third and last plea filed by the defendant, and to file a replication to the said plea numbered II, first filed; the said plea numbered II,
44 second filed, and the third and last plea.

45 *Replication of Plaintiff.*

In the Supreme Court of the United States. October Term, 1886.

THE STATE OF WISCONSIN Plaintiff,
vs.
THE PELICAN INSURANCE COMPANY OF THE CITY OF NEW ORLEANS, STATE OF LOUISIANA, Defendant.

And now comes the plaintiff, The State of Wisconsin, in the above-entitled cause, by leave of the court, and not waiving, but expressly reserving all exceptions and objections which might be taken to the several pleas of the defendant herein, by reason of their uncertainty and insufficiency in law, and which are, respectively, hereinafter replied to, and to so much of the plea numbered
46 II as is material to be replied unto, replying, says:

That this plaintiff denies the averment that the defendant "has not maintained at any place within Wisconsin any officer, appointee, or agent to receive citations, writs, notice of the pendency of suits against it, nor accredited any person to answer to such procedure."

This plaintiff denies the averment that "neither David Lawson, L. D. Harmon, nor H. H. Todd, persons named in the record served upon the defendant with the summons to appear and answer to the complaint of the plaintiff, were officers, agents, or employes of the defendant and accredited by the defendant to receive the notices which appear in the record filed, nor any notices of any such description or object."

Plaintiff further denies the averment in the said plea aver-
47 ring that "neither the said David Lawson, L. D. Harmon, nor H. H. Todd were entitled to do or perform any matter or thing such as the plaintiff's attorney informs them they may do for the said defendant under the said notices."

Plaintiff further denies the averment in the said plea numbered II, that the said attorney (of plaintiff) "was without any license, permission, or authority to address such notices to either of them so as to bind this defendant for any purpose whatever, and was destitute of any authority of law or in fact on account of this defendant to

select these persons to receive notices for or on behalf of the said defendant."

Plaintiff further denies the averments contained in said plea numbered II, "that the circuit court of Dane county was
48 wholly without authority to assume a jurisdiction over this defendant in the suit contained in the said record, as described in the complaint of the plaintiff. The defendant had not been served with notice of the pendency of the suit, nor was the defendant at any time subject to the jurisdiction of the said court; that the said notices to Lawson, Harmon, and Todd were nugatory and without any obligatory force or obligation to affect this defendant, a corporation of another State, and cormorant in that other State during the pendency of that suit."

Plaintiff further denies the averment contained in said plea numbered II, "that the said judgment has been procured by the
49 act of the officers of the plaintiff and for the interest and emolument of the said plaintiff and her officers."

Plaintiff further denies the averment contained in the said plea numbered II, "that the defendant was not within the jurisdiction of the State nor of the court, and that there was no notice served on the defendant, nor any legal notice of the cause, and that the court was not entitled to render judgment in the absence — and without such legal notice."

And the said plaintiff, The State of Wisconsin, further comes, and, not waiving, but expressly reserving, all objections and exceptions which might be taken to the plea numbered "II," being the second plea numbered "II" filed by the defendant in this case, by reason of its uncertainty and unsufficiency in law, and replying to so
50 much thereof as is material to be replied to, says that this plaintiff denies the allegation in the said plea numbered "II," second filed in said case by the defendant, and denies the averment contained in the said last-named plea, which avers "that the judgment thus entered by the officers of the plaintiff in the record of the court was illegally, wrongfully, and fraudulently made, and is without any valid or binding operation and is without effect.

And the plaintiff further denies the averment "that the said defendant, at that date, was beyond the limit of said State, to wit, in the State of Louisiana, and had never been served with any legal and valid process or notice, and was not, at any time during
51 the pendency of the proceedings of the plaintiff and administration of the said circuit court in the matter of the rendition of the judgment by the said circuit court of Dane county, in the State of Wisconsin, nor was a party to the said proceedings or subject to the jurisdiction of the court, and that the said court was without jurisdiction in the matter of the rendition of said judgment."

And the said plaintiff, further replying, denies the averment contained in the said plea numbered "II," second filed, averring "that the pretended service, which the officers of the plaintiff have caused to be placed on the records of that court, in the absence of the said defendant, were made upon citizens of the said plaintiff who

52 were not officers of this defendant, nor agents of the defendant, nor entitled to accept service on behalf of this defendant, nor capable to bind this defendant, and were selected by the officers of the plaintiff without any knowledge or consent of this defendant, and for the purpose of giving a specious and delusive appearance of legality without the substance of the same."

And the plaintiff, further replying to the said plea numbered "II," second filed, denies the averment of such plea which avers "that neither L. D. Harmon, David Lawson, nor H. H. Todd were at the date of the service, *were* agents of the defendant, nor had any
53 license, authority, or right to receive the notices returned to the said court, and that the said court made the said judgment without jurisdiction over the defendant, and without notice to the defendant of their wrongful and illegal exercise of jurisdiction."

And the said plaintiff, The State of Wisconsin, not waiving, but expressly reserving, all objections and exceptions which might be taken to the plea of the said defendant numbered 'III," and third filed by the defendant in this case, by reason of its uncertainty and insufficiency in law, now comes and, replying to so much of the said third plea as is material to be replied to, says that plain-
54 tiff denies the averment in the said plea that the said defendant "issued policies of insurance there (in New Orleans) and not elsewhere;" and further denies the averment in said third plea that "the defendant had not, at the time of the commencement of this suit, any agent, attorney, or appointee competent or authorized to appear to any suit or action commenced by the said plaintiff in her courts for any cause, and had not invested any person with authority to receive citations, writs, or process of any sort, the object of which was to inform this defendant of the commencement of a suit, or to oblige this defendant to appear in or defend the suit which the State had or might commence for any cause."

55 And the plaintiff, further replying to the said third plea, denies the averment therein which alleges "that neither David Lawson, L. D. Harmon, nor H. H. Todd had authority to receive citation, summons, or other process of any sort for the account of this defendant, nor to comply with the contents in its behalf, or to oblige this defendant to submit to the same. This defendant had never designated them as agents or accredited them to act in its stead; but that these persons are citizens of Wisconsin, and neither of them an officer or agent of the defendant, but were selected by officers and agents of the plaintiff and to give an appearance of regularity, without
56 the same being legal or authorized by the law or by the defendant, the aim seeming to be to prepare a suit for this Court."

And this plaintiff, further replying to said third plea, denies the averment contained in such plea that "there was not any service of process conformably to law, and the pretended service upon Lawson, Harmon, and Todd was nugatory and void; this defendant was all the time beyond the limits of the State and beyond the jurisdiction

of the court and not answerable to the said court for the matters set forth in the said complaint made to the court."

And this plaintiff, further replying to the several and re-
57 spective pleas of the defendant hereinabove named, further avers that at and before the time of the commencement of the said action, in which was rendered the judgment named in the declaration herein, and at the time of the service of the notices and writs in the said action upon the said David Lawson, L. D. Harmon, and H. H. Todd, as set forth in the said several and respective pleas of defendant, the said David Lawson, L. D. Harmon, and H. H. Todd, each, respectively, the agent in the said State of Wisconsin for the said defendant and as such by the defendant then and — recognized and authorized in and about the matter of soliciting and receiving applications for policies of insurance against
58 fire, and in and about issuing the same on behalf of the defendant to and in favor of citizens and residents of the State of Wisconsin, insuring the property in the State of Wisconsin of such citizens against loss by fire; and at the time of the said service of the said notices and writs upon the said David Lawson, L. D. Harmon, and H. H. Todd, respectively, and before that time each of the persons last named was, by the procurement and authority of the defendant, acting, and theretofore had been acting, as the recognized agent of the said defendant within the State of Wisconsin in the matter of soliciting and issuing to citizens of Wisconsin, in the State of Wisconsin,
59 policies of insurance upon the property of such citizens, such property located within the State of Wisconsin, against loss by fire, for and on behalf of the said defendant as such insurance corporation; and pursuant to such agency the said several agents did, at and before the times of the service of said notices and writs, as stated in said pleas, respectively, in the said State of Wisconsin, solicit, on behalf of the defendant, applications for insurance against fire on property in the said State of Wisconsin, of the citizens of said State, and did make out and transmit and cause to be transmitted to the defendant applications for such insurance on behalf of
60 parties, citizens of said State, on property in said State, desiring to have their said property insured by the defendant, and said agents did then and there receive from the defendant policies of insurance issued on such applications; and said agents did then and there, in pursuance of their said agencies, respectively, deliver said policies in the said State to the said insured, residents of the said State, upon the property aforesaid; and said agents, respectively, did then and there collect from the said insured the premiums thereof paid by the said insured, and did then and there receive a commission from the defendant for their said respective serv-
61 ices out of the premiums named in the said policies as the consideration for said risks taken by defendant through said respective agents; and at the times last aforesaid the said defendant had, through the agency of the said agents, Lawson, Harmon, and Todd, respectively, and also through the agency of other agents of defendant within said State of Wisconsin, to a large extent issued

in the said State, policies of insurance against loss by fire upon such property of such citizens so situate in the said State, and had paid to such agents their commission for their services as agents in said behalf; all of which the plaintiff is ready to verify.

H. W. CHYNOWETH,
SAM'L SHELLABARGER,
62 J. M. WILSON, *Att'ys for Pl'ff.*

(Endorsed:) U. S. Supreme Court. 1886, October term. No. 6. Original. State of Wisconsin, plaintiff, *v.* Pelican Insurance Company of New Orleans, Louisiana. Replication of plaintiff. Filed March 21, 1887.

63 *Defendant's Rejoinder.*

Supreme Court of the United States.

THE STATE OF WISCONSIN, Plaintiff,
vs.
THE PELICAN INSURANCE COMPANY OF THE CITY OF NEW ORLEANS, Defendant.

The said defendant rejoins to the replication of the said plaintiff that the pleas made by this defendant in answer to its unreasonable complaint are sufficient in law and are true in respect to matters of fact and fully entitle the defendant to the judgment of this Court of a dismissal of the said complaint, and to a judgment for the
64 costs against the said plaintiff, and this the defendant is ready to sustain with proofs as the Court shall require or direct.

JOHN A. CAMPBELL,
Defendant's Atto.

(Endorsed:) Supreme Court U. S. 1886, Oct'r term. No. 6. Orig'l. The State of Wisconsin, plaintiff, *vs.* The Pelican Insurance Co. Defendant's rejoinder. Filed Mar. 26, 1887. James H. McKenney, clerk.

65 *Motion and Consent to Waive Jury, for Order as to Taking Testimony, & as to Hearing Demurrer.*

Supreme Court of the United States.

STATE OF WISCONSIN, Plaintiff, *vs.* THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, LOUISIANA.	No. 6. Original Jurisdiction.

In the above-entitled case the plaintiff asks the Court to make an entry stating that, by the consent of the parties, a jury in the above case is waived.

Also a further order that the testimony to be presented to the Court in the case shall be in the form of depositions taken by the

respective parties, in the manner and upon such notice as the Court shall direct, and that the Court shall make an order directing the manner of taking the depositions and fixing the character of the notice that shall be given by the parties, respectively, to the attorneys of record of the adverse party.

Also that the Court will fix a time for hearing the demurrer of the plaintiff to the first plea of the defendant, now remaining on file, and that the Court will further direct how the counsel will be heard upon the said demurrer, whether by briefs or oral argument, or both.

SHELLABARGER & WILSON,
Attorneys for Plaintiff.

66 723 ST. PAUL STREET,
BALTIMORE, 29 *March*, 1887.

Messrs. Shellabarger & Wilson, Kellogg's buildings, Washington city.

GENT'N: I have your note. I consent to the hearing of the demurrer in the suit No. 3 of the original cases in the Supreme Court at this term, and that the issues of fact may be determined by the Court without a jury. The case referred to is The State of Wisconsin, plaintiff, against The Pelican Insurance Company of the city of New Orleans.

Very respectfully yours,

JOHN A. CAMPBELL.

67 (Endorsed:) Supreme Court U. S. 1886, October term. No. 6. Original. The State of Wisconsin, plaintiff, *vs.* The Pelican Insurance Co. Motion and consent to waive jury, and for order as to taking testimony and time for hearing demurrer Filed April 4, 1887.

68 And afterwards, to wit, on the 11th day of April, A. D. 1887, the following entry appears of record, viz:

THE STATE OF WISCONSIN, Plaintiff,
vs.
THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, LA. } No. 6. Original.

It is ordered by the Court that the demurrer of the plaintiff to the first plea of the defendant be, and the same is hereby, assigned for argument on Monday, April 25th, at the head of the call for that day, and that printed briefs be filed in accordance with the 21st
69 rule, which is hereby made applicable to all the hearings of the case.

127-20

IN THE

Supreme Court of the United States

ORIGINAL DOCKET, No. 6.

THE STATE OF WISCONSIN, Plaintiff,

vs.

THE PELICAN INSURANCE COMPANY of New Orleans, Louisiana, Defendant.

Brief, on Behalf of Plaintiff, on Demurrer of Plaintiff to the Defendant's first Plea,

BY

SAMUEL SHELLABARGER,
J. M. WILSON,
H. W. CHYNOWETH,
Attorneys for Plaintiff.

Thomas McGill & Co., Law Printers, Washington, D. C.

IN THE

Supreme Court of the United States.

THE STATE OF WISCONSIN, Plaintiff,
vs.
THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, LOUISIANA, Defendant.

Original Docket No. 6.

Brief on Behalf of Plaintiff upon Demurrer of Plaintiff to the Defendant's First Plea.

Record and Statutes Involved in Issue Presented by the Demurrer.

The following is a copy of the declaration to which the defendant's first plea, demurred to, is interposed:

In the Supreme Court of the United States.

THE STATE OF WISCONSIN, Plaintiff,
vs.
THE PELICAN INSURANCE COMPANY OF NEW ORLEANS, Defendant.

The plaintiff, the State of Wisconsin, and one of the States of the United States, now comes and complains of the defendant, The Pelican Insurance Company of New

Orleans, a corporation duly organized and existing under the laws of the State of Louisiana, in a plea of debt—

For that, whereas, the plaintiff, the said State of Wisconsin, on the 16th day of September, in the year 1886, at the county of Dane, in the said State of Wisconsin, and in and before the Dane County Circuit Court in said State—such court being then and there a court of general jurisdiction under the laws of said State—and by the consideration and judgment of the said court, recovered, against the said defendant, the said Pelican Insurance Company, a judgment, in favor of the said plaintiff, for the sum of eight thousand five hundred dollars damages, together with the further sum of forty-five dollars and thirty-nine cents for costs and disbursements, amounting, in all, to the sum of eight thousand five hundred and forty-five dollars and thirty-nine cents; which said judgment still remains, in that court, in full force and effect, and not in anywise modified, reversed, set aside, appealed from, or otherwise vacated; and the said plaintiff, the said State of Wisconsin, hath not obtained any satisfaction upon the said judgment, but, on the contrary, the whole thereof, together with interest thereon from said date of such judgment, remains wholly unpaid and owing; whereby an action hath accrued unto the said plaintiff, the said State of Wisconsin, to demand and have from and of the said defendant the said sum of eight thousand five hundred and forty-five dollars and thirty-nine cents, with interest.

Wherefore, the said plaintiff, the said State of Wisconsin, saith that the plaintiff is injured, and hath sustained damage to the said amount of eight thousand five hundred and forty-five dollars and thirty-nine cents, with interest, and therefore it brings this suit.

SAMUEL SHELLABARGER,
J. M. WILSON,
H. W. CHYNOWETH,
Attorneys for Plaintiff.

The following is a copy of the defendant's first plea, being that to which the demurrer of plaintiff is interposed:

In the Supreme Court of the United States.
October Term 1886.

THE STATE OF WISCONSIN, Plaintiff,
vs.
THE PELICAN INSURANCE COMPANY OF THE CITY OF NEW ORLEANS, STATE OF LOUISIANA, Defendant.

I.

The defendant aforesaid appears, by attorney, according to the summons of the court, to make answer to the complaint filed in this court by the plaintiff aforesaid. The defendant is a civil corporation organized under the terms of the Revised Statutes of the State of Louisiana, sections 683 to 688, both inclusive, and is authorized to effect fire insurances, and is subject to suit, and required to determine its domicile in the city aforesaid, and to maintain and designate an officer of that company to receive their citations and other judicial writs and notices. This duty has been fulfilled from the date of the organization, and the charter of the company has been recorded and published, as those statutes require, in the office of the Recorder of Mortgages and a city paper, for the time defined in the statute. No other designation has been made or required of the defendant. The section 687 of the Revised Statutes defines the original jurisdiction of this court, and designates as subjects for the exercise of that jurisdiction, where a State is the complainant, citizens of States other than the plaintiff or complainant; and that there should be no error on the subject, the first section of the fourteenth amendment to the Constitution of the United States exactly describes all of those who are citizens.

They are natural persons born or naturalized within the limits of the United States, and having a residence in any States; determine the State in which he may have privilege or immunity as a citizen. Moreover, the complaint of the plaintiff discloses that this defendant is a fire insurance company without political character or interstate relations, and had its origin and domicile in New Orleans, and that

the said corporation had offended the State of Wisconsin by imputed and alleged disobedience or inattention to her statute laws, and had incurred heavy forfeitures and penalties by such offenses to the sum stated in the demand, and for the collection of which fines and forfeitures and penalties this suit has been commenced in this court. But the defendant says that the statute of the United States above cited further defines the cause for the exercise of the original jurisdiction—that the controversy should be of a civil nature, and not of a punitive nature, as is shown by this record. It excludes from cognizance of this court the punitive statutes and divers litigations arising out of the internal and peculiar and peevish regulations, accompanied with fines, forfeitures, and arbitrary exactions, which a State may impose upon citizens or corporations of other States from a just cause or from caprice or captiousness. The controversy must be of a *civil nature*, and not for penalties or forfeitures. Wherefore the defendant submits to this court that the complaint of this plaintiff does not show a cause within the original jurisdiction of the court, nor within the terms of the statutes of the United States.

The following is a copy of the demurrer by plaintiff to said first plea of defendant:

In the Supreme Court of the United States.

October Term 1886.

THE STATE OF WISCONSIN, Plaintiff,
vs.
THE PELICAN INSURANCE COMPANY OF THE CITY OF NEW ORLEANS, STATE OF LOUISIANA, Defendant.

And now comes the plaintiff in the above-entitled action, the State of Wisconsin, and as to the first answer and plea of the said defendant, The Pelican Insurance Company of the City of New Orleans, State of Louisiana, by said defendant first above answered and pleaded, saith that the same, and the matters therein contained, in manner and form as the same are pleaded and set forth, are not suffi-

cient in law to bar or preclude it, the said State of Wisconsin, from having or maintaining its aforesaid action thereof against the said Pelican Insurance Company, defendant, and that the said State of Wisconsin is not bound by the law of the land to answer the same, and this it, the said State of Wisconsin, is ready to verify. Wherefore, for want of a sufficient plea or answer in this behalf, the said State of Wisconsin prays judgment and its damages by reason of the non-performance of the obligations in the said declaration mentioned to be adjudged to the said plaintiff.

The following are the sections of the statutes of Wisconsin which are supposed to have some bearing, more or less, on the issue raised by the demurrer. The following are found in the Revised Statutes of Wisconsin of 1878:

SECTION 1220. Every company transacting the business of life or accidental insurance in this State shall, on or before the first day of March in each year, pay to the State Treasurer, as an annual license-fee for transacting such business, the sum of three hundred dollars, and in addition each such company, organized under the laws of this State, shall pay two per centum of its cash receipts for premiums by it received in this State during the calendar year preceding, as shown by its reports required to be made by law. Such license, when granted, shall authorize the company to whom it is issued to transact business until the first day of March in the ensuing year, unless sooner revoked or forfeited according to law. The payment of such sum shall be in lieu of all taxes for any purpose authorized by the laws of this State, except taxes on such real estate as may be owned by such corporation.

SECTION 1915. No fire or fire and inland navigation or transportation corporation incorporated under the laws of any other State of the United States, or of any foreign governments, shall, directly or indirectly, take risks or transact any business of insurance in this State except upon compliance with and maintenance of the following requirements:

1. It shall be possessed of, if a stock corporation, an actual paid-up, in cash, capital of two hundred thousand dollars; but mutual corporations of other States may be

admitted, in case the State where such corporations are located admit the mutual corporations of this State, by complying in all respects with the conditions and obligations imposed by such States on the mutual corporations of this State.

2. It shall first file a written instrument duly signed by the president and secretary thereof, with the corporate seal affixed, declaring that it desires to transact the business of insurance in this State, and that it will accept a license therefor according to the laws of this State, which shall cease and terminate in case such corporation shall remove or make application to remove into any court of the United States any action or proceeding commenced in any court of this State, upon a claim or cause of action arising out of any business or transaction done in this State, or in case it shall violate or fail to comply with any provision of law applicable to such corporation, or in case its capital shall be impaired to the extent of twenty per cent., and shall not be made good within such time as the Commissioner of Insurance shall require; if the Commissioner of Insurance shall in either case declare its license revoked therefor, and it shall therein appoint an attorney to reside in this State, specifying his place of residence, on whom and where any summons, notice, or process of any court of this State may be served, and stipulate that any service of any such summons, notice, or process upon such attorney in any action brought upon any cause arising out of any business or transaction in this State during the term of such license, shall be accepted irrevocably as a valid service upon said corporation, unless some other attorney shall be subsequently appointed with like authority in his stead.

3. It shall file in the office of the Commissioner of Insurance a copy of its charter, duly certified by its secretary, together with a statement, verified by the oath of the president, vice-president, or other chief officer, and of the secretary, containing the name of the corporation, place where located, amount of its capital stock, and a detailed statement of its assets, showing the amount of cash on hand and in bank, the amount of real estate, and how much of the same is incumbered by mortgage or otherwise, the number of shares of stock of every kind owned by it, the par and market value of the same, the amount loaned on bond and mortgage, the amount loaned on other securities, stating

the amount and kind loaned on each, the estimated value of the whole amount of such securities, and all the other assets or property, and the value thereof; also showing the amount of its indebtedness, the amount of losses adjusted and unpaid, the amount incurred and in process of adjustment, the amount resisted as illegal or fraudulent, and all other claims existing against it; also a copy of the last report, if any, made under any law of the State by which it was incorporated.

4. Every such corporation organized under the laws of any foreign government shall, in addition to the foregoing, file in the office of the Commissioner of Insurance a statement, verified by the oath of the president, secretary, or manager residing in the United States, showing to the satisfaction of the Commissioner of Insurance that such corporation has invested in the stocks or bonds of the United States, of the States of New York or Wisconsin, such stock or bonds to be in all cases equal to a stock producing six per centum per annum, and in bonds or mortgages on unincumbered real estate worth fifty per cent. more than the amount loaned thereon, the sum of at least two hundred thousand dollars, and that such stock or bonds are deposited with the Superintendent of the Insurance Department, State Treasurer, or other proper officer of some one of the States of the United States, or are held by citizens of the United States, as trustees, and that such securities are not pledged or incumbered, but are held and remain for the benefit and security of the policy-holders of such corporation residing in the United States; or, in default of such statement, shall deposit, with the State Treasurer, for the benefit and security of policy-holders residing in the United States, a sum not less than fifty thousand dollars, or stocks of the United States or of the State of Wisconsin, in all cases to be equal to a stock producing six per cent. per annum, said stocks not to be received by said Treasurer at a rate above their par value, or above their current value, or in bonds and mortgages on improved unincumbered real estate in the State of Wisconsin worth fifty per cent. more than the amount loaned thereon. The stocks and securities so deposited may be exchanged from time to time for other securities receivable as aforesaid; and so long as the corporation so depositing shall continue solvent and comply with the laws of this State, such cor-

poration may be permitted by the State Treasurer to collect the interest or dividends on said deposit; and where deposit is made of bonds or mortgages, accompanied by full abstracts of titles, the fees for an examination of title by counsel, to be paid by the party making the deposit, shall not exceed twenty dollars for each mortgage, and the fees for an appraisal of property shall be five dollars to each appraiser, not exceeding two, besides expenses for each mortgage.

5. It shall renew from year to year, in such manner and form as may be required by the Commissioner of Insurance, the statements and evidences of investments and deposits above required, and shall make and file the annual statement and report required by the provisions of section nineteen hundred and twenty, so long as it shall transact business in this State.

6. It shall first procure from the Treasurer a certificate for the deposit so made when required by the foregoing provisions, and from the Commissioner of Insurance a certificate of authority stating that such corporation has complied with all the provisions of this chapter applicable to it.

7. It shall pay to the State Treasurer the license fees required to be paid by section twelve hundred and nineteen at the time and in the manner therein described.

SECTION 1920. The president, or vice-president and secretary, of each fire, inland navigation, or transportation insurance corporation, except town corporations, doing business in this State, shall annually, within the month of January, prepare and deposit in the office of the Commissioner of Insurance a statement, verified by their oaths, of the business of the corporation during the year, and of the condition thereof on the thirty-first day of December then next preceding, exhibiting the following items:

First. The amount of the capital stock of the corporation.

Second. The property or assets of the corporation, specifying—

1. The value, as near as may be, of the real estate held by such corporation.

2. The amount of cash on hand in such corporation's office, and also the amount deposited in bank to the credit

of such corporation, and specifying in what bank or banks the same is deposited.

3. The amount of loans secured by bonds or mortgages, constituting the first lien on real estate, on which there shall be less than one year's interest due or owing.

4. The amount of loans on which interest shall not have been paid within one year previous to such statement.

5. The amount due the corporation on which judgments have been obtained.

6. The amount of stocks of this State, of the United States, of any incorporated city of this State, and of any other stocks owned by the corporation, specifying the amount, number of shares, and the par and market value of each kind of stocks held.

7. The amount of stocks held thereby as collateral security for loans, with the amount loaned on each kind of stock, its par value and market value.

8. The amount of the assessments on stocks and premium-notes, paid and unpaid.

9. The amount of interest actually due and unpaid.

10. The amount of premium-notes on hand on which policies are in force.

11. The amount and manner of the investment of its guaranty surplus fund, if any.

12. The amount and manner of the investment of its special reserve fund, if any.

Third. The liabilities of such corporation, specifying—

1. The amount of losses due and unpaid.

2. The amount of claims for losses resisted by the corporation.

3. The amount of losses incurred during the year, including those claimed and not yet due, and those reported to the corporation upon which no action has been taken.

4. The amount of dividends declared due and unpaid.

5. The amount of dividends, either cash or scrip, declared but not yet due.

6. The amount of money borrowed and security given for the payment thereof.

7. The amount required to reinsure all outstanding risks.

8. The amount of all other existing claims against the corporation.

Fourth. The income of the corporation during the preceding year, specifying—

1. The amount of interest money received.
2. The amount of cash premiums received.
3. The amount of notes received for premiums.
4. The amount of income received from other sources.
5. The amount received in cash premiums for insuring property in this State.
6. The amount received in premium notes, in cash notes, and the amount received from other sources in this State.

Fifth. The expenditures during the preceding year, specifying—

1. The amount of losses paid during the year, stating how much accrued prior and how much subsequent to the date of the preceding statement.
2. The amount of dividends paid during the year.
3. The amount of expenses during the year, stating the amount paid officers' salary and fees; the amount paid agents' commission and fees, and the amount paid for office expenses and rent, the amount paid for taxes, and the amount of all other payments and expenditures.
4. The amount paid in this State for salaries, commissions to agents, and for losses.

Sixth. Any other items or facts which the Commissioner of Insurance may require.

The statement of every such corporation whose capital is composed in whole or in part of notes shall show the amount of notes originally forming such capital, and what portion of them is still held by such corporation and considered capital.

The statement of any such foreign corporation shall set forth its business and affairs in the United States, duly verified by its resident manager in the United States. For any failure to make and deposit such annual statement, or to promptly reply in writing to any inquiry addressed by the Commissioner of Insurance in relation to the business of any such corporation, or for willfully making any false statement therein, every such corporation or officer so failing or making such false statement shall forfeit five hundred dollars, and for neglecting to file such annual statement an additional five hundred dollars for every month that such corporation shall continue thereafter to transact any

insurance business in this State until such statement be filed.

SECTION 1952. Every life or accident insurance corporation doing business in this State which does business upon the principle of mutual insurance, or the members of which are entitled to a share in the surplus funds thereof, may make distribution of such surplus as they may have accumulated, annually, or once in two, three, four, or five years, as the directors thereof may from time to time determine. In determining the amount of the surplus to be distributed, there shall be reserved an amount not less than the aggregate net value of all outstanding policies, said value to be computed by the "American Experience Table of Mortality," with interest not exceeding four and one-half per cent.

SECTION 1953. Every life or accident insurance corporation not organized under the laws of this State shall, before doing business therein, deposit with the Commissioner of Insurance a copy of this charter, and a statement, signed and verified by the affidavit of the president or vice-president, and of the secretary, in the form hereinafter prescribed for its annual statements; and also a written instrument duly signed by the president and secretary thereof, with the corporate seal affixed, and therein appoint an attorney to reside in this State, specifying his place of residence, upon whom and where any summons, notice, or process of any court of this State may be served, and stipulate that any service of any such summons, notice, or process upon any such attorney in any action brought upon any cause of action arising out of any business transaction in this State shall be accepted irrevocably as a valid service upon such corporation; unless another attorney shall be subsequently appointed with like authority in his stead, such authority shall be continued unrevoked while any liability remains outstanding against the corporation in this State, and such an appointment shall not be revoked until another be made and a like letter of attorney deposited.

SECTION 1977. Whoever solicits insurance on behalf of any insurance corporation, or transmits an application for insurance or a policy of insurance to or from any such corporation, or who makes any contract of insurance or collects or receives any premium for insurance, or in any

manner aids or assists in doing either, or in transmitting any business for any insurance corporation, or advertises to do any such thing, shall be held an agent of such corporation to all intents and purposes, and the word agent, whenever used in this chapter, shall be construed to include all such persons.

SECTION 2637. Actions against corporations shall be commenced in the same manner as personal actions against natural persons. The summons, the accompanying complaint or notice aforesaid, shall be served, and such service held of the same effect as personal service on a natural person, by delivering a copy thereof, as follows:

1. If the action be against a county, to the county clerk.

2. If against a town, to the chairman of the town and the town clerk.

3. If against a city, to the mayor and the city clerk.

4. If against a village, to the president of the board of trustees and the village clerk.

5. If against a school district, to the directory and the clerk thereof.

6. If against a railroad corporation whose general office is within this State, to the president, secretary, superintendent, general manager, or general solicitor thereof, if either shall reside and be within the State.

7. If against a railroad corporation, whose general office is, or all whose aforesaid officers shall reside or be without the State, to any station, freight, ticket, or other agent thereof within the State.

8. If against a corporation owning or operating sleeping or hotel cars, or the like, which has not its general office in the State, to any person having charge of any of its cars, or any agent found within the State.

9. If against any insurance corporation not organized under the laws of this State, to the agent or attorney thereof having authority therefor by appointment under the provisions of section nineteen hundred and fifteen, or section nineteen hundred and fifty-three, *or to any agent of such corporation within the definition of section nineteen hundred and seventy-seven, in the State.*

10. If against any other corporation organized under the laws of this State, to the president or other chief officer, vice-president, secretary, cashier, treasurer, director, or managing agent thereof.

11. If against any other foreign corporation, to any such officer being within the State, or to any agent having charge of or conducting any business therefor in this State, or any trustee or assignee of such corporation. But such service can be made upon a foreign corporation only either when it has property within the State, or the cause of action arose therein, or the cause of action exists in favor of a resident of the State.

Section 5, Chapter 240, Laws of Wisconsin of 1880, p. 278.

Whoever solicits insurance on behalf of any insurance corporation or property owner, or transmits an application for insurance, or a policy of insurance, other than for himself, to or from any such corporation, or who makes any contract for insurance, or collects any premium for insurance, or in any manner aids or assists in doing either, or in transacting any business of like nature for any insurance corporation, or advertises to do any such thing, shall be held to be an agent of such corporation to all intents and purposes, unless it can be shown that he receives no compensation for such services.

CHAPTER 443.

(Published April 17, 1885.)

AN ACT to regulate the admission of foreign surety companies to do business in this State.

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Any surety company incorporated and organized under the laws of any State of the United States other than the State of Wisconsin for the purpose of transacting business as surety on obligations of persons or corporations may transact such business in this State upon the terms and conditions imposed, and with the privileges conferred upon fire insurance companies doing business in this State, and shall be subject, so far as practicable, to all the provisions of law applicable thereto. In an action against such corporation, or in an action against any insurance corporation not organized under the laws of this State, the summons and complaint, or the summons without the complaint, may be served, and such service held

of same effect as personal service upon a natural person, by delivering a copy of such summons and complaint, or a copy of the summons without the complaint, to any person who shall solicit insurance on behalf of any such insurance corporation or property owner, or who transmits an application for insurance or a policy of insurance to or from any such insurance corporation, or who makes any contract for insurance or collects or receives any premium for insurance, or who adjusts or settles a loss, or pays the same, for such insurance corporation, or in any manner aids or assists in doing either, or in transacting any business for such insurance corporation, or on any person who advertises to do any such thing.

SECTION 2. This act shall take effect immediately, and all acts and parts of acts inconsistent herewith are hereby repealed.

Approved April 11, 1885.

These, we believe, are all of the sections of the Wisconsin statutes which are involved, or supposed to be involved, in the present issue.

The plea demurred to cites and relies on section 687 of the Revised Statutes of the United States, which provides that—

"The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter case it shall have original, but not exclusive, jurisdiction."

BRIEF.

It will be observed, from an inspection of the declaration above set forth, that the declaration is one in an action of debt by a State, to wit, Wisconsin, against an insurance corporation alleged to be "a corporation duly organized and existing under the laws of the State of Louisiana," and avers that the plaintiff, on 10th of September, 1886, at the county of Dane, in Wisconsin, and before the County Cir-

cuit Court in said State, such court being then and there a court of general jurisdiction under the laws of Wisconsin, recovered a judgment against said defendant insurance company for $8,500 damages and $45.39 costs, amounting in all to $8,545.39.

This is the exact substance of the declaration to which said first plea is interposed as a defense.

The plea is, in its form as well as substance, to say the least, somewhat anomalous, and more like a combination of an answer in chancery and an argument, than like a common-law plea to a declaration, in debt, on a judgment. Its parts may be separated and condensed as follows:

1st. It alleges the defendant to be a corporation organized under sections 683 to 688, inclusive, of the laws of Louisiana.

2d. Is authorized to effect fire insurance.

8d. Is subject to suit.

4th. Is required to determine its domicile in New Orleans, to maintain and designate an officer there to receive citations, writs, and notices.

5th. That this duty of defendant has been fulfilled from date of organization, and the charter of company has been recorded and published, as required by said statutes, in record of mortgages and in city newspapers.

6th. That no other designation has been made or required of defendant.

7th. That section 687 of the Revised Statutes of the United States defines original jurisdiction of the Supreme Court of the United States, and designates, as subjects for the exercise of that jurisdiction, where a State is complainant, citizens of States other than the plaintiff's or complainant's; and that there should be no error on the subject, the first section of the fourteenth amendment to the Constitution of the United States exactly describes all those who are citizens—they "are natural persons born or naturalized within the limits of the United States; and having a resi-

dence in any State, determines the State in which he may have privilege or immunity as a citizen."

8th. That complaint of plaintiff shows defendant is "a fire insurance company without political character or interstate relations."

9th. That defendant "had its origin and domicile in New Orleans."

10th. "That said corporation had offended" Wisconsin "by imputed and alleged disobedience or inattention to her statute laws, and had incurred forfeitures and penalties to the sum stated in the demand, and for collection of which fines and forfeitures and penalties this suit has been commenced in this court."

11th. That defendant says said section 687 of the Revised Statutes of the United States defines the cause for this court's original jurisdiction, and it must be a controversy of a "civil nature," and not punitive, as shown by this record, and excludes from this court's cognizance punitive statutes and divers litigations arising out of the internal and peculiar and peevish regulations, accompanied by fines, forfeitures, and arbitrary exactions, which a State may impose upon citizens or corporations of other States from just cause or from caprice or captiousness. The controversy must be of "a civil nature," and not for penalties or forfeitures. Such is the plea.

Attempting to reduce this rather singular pleading still further, and to its last analysis, it is an attempt to present, in defeat of this court's original jurisdiction, two wholly distinct and independent grounds, to wit:

1st. That because the defendant is a local fire insurance company, deriving its existence, location, and non-political and non-interstate franchise from the local or State laws, it is therefore not a "citizen of another State," within the sense of these words, either as found in section 687 of the Revised Statutes of the United States, or as found in section 2, article 3, of the Constitution of the United States,

or within the meaning of the words, "citizens of the United States and of the State wherein they reside," as found in the fourteenth amendment; and

2d. That the present suit is one for the enforcement of a penalty or forfeiture, and is a suit penal in its character, and is not "a controversy of a civil nature," within the meaning of these words in section 687.

The first legal defect of this plea is that it is bad for duplicity or multifariousness, in that it sets up, in a single plea, two independent and distinct alleged grounds of defense. This would be fatal to the plea if properly insisted upon. See the following:

Rhode Island *v.* Massachusetts, 14 Pet., 211, 259, where accord and compromise, and also prescription, were joined in one plea, which was overruled as multifarious; Lord *v.* Tyler, 14 Pick., 164; Dunning *v.* Owen, 14 Mass., 157; Hooper *v.* Jellison, 22 Pick., 250.

This, however, is an objection to the plea which the plaintiff does not care to urge, and therefore has not raised by special demurrer. Each of these alleged defenses is, we submit, plainly bad. The first, to wit, that this action of debt upon a judgment is not an action of a civil nature, is obviously untenable, because the use of the words "controversies of a civil nature," as found in section 687, has sole regard to that primary division of actions into two classes—civil and criminal.

The classification pointed to by the words "controversies of a civil nature" is that, and only that, pointed out in 4 Blackstone's Commentaries, page 5, in these words:

"The distinction of public wrongs from private, of crimes and misdemeanors from civil injuries, seems principally to consist in this: That private wrongs, or civil injuries, are an infringement or privation of civil rights which belong to individuals, considered merely as individuals; public wrongs, or crimes and misdemeanors, are a breach or violation of public rights and duties due to the whole community, considered as a community, in its social aggregate capacity."

Had section 687 attempted to exclude, from the original jurisdiction of this court, jurisdiction of the pecuniary or civil rights due to a State in its corporate capacity (and a State is a *private individual* when suing under the original jurisdiction of this court) merely because the debt owing to the State arose out of a tort instead of a contract, then the section would have been palpably in violation of section 2, article 3, of the Constitution, which does not so limit the original jurisdiction of this court, but, on the contrary, expressly extends its original jurisdiction to "all cases * * * in which a State shall be a party," and which comes within the judicial power of the United States, and which judicial power the same section extends to "all cases in law and equity," including "controversies between a State and the citizens of another State."

This, therefore, takes in every case, in law and equity, between a State and citizens of another State where the liability is of a civil nature, within the definition of these words as above given from Blackstone, whether sounding in contract or in tort. The eleventh amendment to the Constitution enforces this interpretation of the words "cases" and "controversies," as found in section 2, article 3, did these words admit of any doubt as applied to controversies between a State and citizens of another State. This is so because, in this eleventh amendment the words "cases in law and equity," as applied to States and citizens of other States, are supplied by the words "any suit in law or equity." The words "cases in law and equity" in section 2, article 3, are the equivalent of "any suit in law or equity" as found in eleventh amendment.

And it is thoroughly settled by this court that the word "suit," as applied to a controversy between a State and citizens of another State, means any civil demand or claim for money or private right, as distinguished from a criminal prosecution.

All criminal prosecutions, as to their method of institu-

tion and prosecution, are thoroughly distinguished from these "controversies at law or in equity," by article VI of the amendments; and, amongst other things, it compels every criminal prosecution to be in the district, previously ascertained by law, wherein the crime shall have been committed.

It is thus that, from the beginning, the Constitution has been held to divide actions into two classes as applied to the original jurisdiction of this court where States are parties, to wit, into civil and criminal, and to make the original jurisdiction of this court apply to every "case" or "suit" or "controversy" where a State is plaintiff and a citizen of another State defendant, and which is not within the words "criminal prosecutions," as found in the sixth amendment. And these express provisions of the Constitution were the authority upon which Congress was entitled to introduce, and did introduce, the words "civil nature" after the word "controversies" in section 687 of the Revised Statutes of the United States.

2d. Another conclusive reason why the present action is of a civil nature is that it is an action *ex contractu*, founded upon a contract of record, to wit, judgment; and is in no sense penal. In the court below every penal element, entering into the original cause of action, was conclusively tried, adjudicated, and settled beyond review by this court, if jurisdiction existed in the court below. This court sits upon and tries (outside of said question of jurisdiction) the question of pecuniary indebtedness, and can neither inquire into nor know what was the cause of action in the original suit. That question is absolutely excluded from the investigation of this court.

In Biddle *v.* Wilkins, 1 Pet., 692, it is expressly held that in an action upon a judgment by a court having jurisdiction of the subject matter, "no matter of defense can be pleaded in such case which existed anterior to the judgment."

This doctrine is reasserted, upon an elaborate review of

all the cases, in Pennington *v.* Gibson, 16 How., 65. That was an action of debt upon a decree in equity by the Supreme Court of New York, where the court held that, like as upon judgments at law, so as to decrees in equity, "a verdict and judgment of a court of record, or a decree in chancery, although not binding on strangers, puts an end to further controversies concerning the points decided between the parties to the suit. * * * The rule has found its way into every system of jurisprudence, not only from its obvious fitness and propriety, but because without it an end could never be put to litigation."

These cases might be indefinitely multiplied, but need not be; and the apology for citing any upon a proposition so familiar and settled as the one we now enforce, namely, that the rendition of a judgment by a competent jurisdiction merges and extinguishes the original cause of action, and makes the judgment to be a new debt, with the new characteristics of contract obligation, against which no defense is allowed that did not arise subsequently to the judgment, is to be found only in the fact that the plea demurred to is one that ignores this fundamental and settled rule of the law, recognized, as remarked by this court, in every system of jurisprudence known to civilized States. The proposition, now last considered—alleging that the court cannot know what the nature of the action below was, and that whatever it was, whether tort, contract, forfeiture, or penalty, it is now, in this court, nothing else or other than a contract obligation—we re-state, in the language of Freeman on Judgments, in these words:

"Every judgment is for most purposes to be regarded as a new debt. * * * This new debt is not in general affected by the character of the old one; though the cause of action may have arisen from a tort, the judgment is not, therefore, any the less a contract, or in the nature of a contract. Hence, it may be the foundation of an action of debt, (Johnson *v.* Butler, 2 Iowa, 535,) or of a set-off under a statute permitting matters *ex contractu* to be set off. (Tay-

lor *v.* Root, 4 Keyes, 335.) Neither is it infected by the usurious nature of the cause of action. (Thatcher *v.* Gammon, 12 Mass., 268.) A judgment rendered in one State upon a forfeited recognizance taken for alleged violation of its penal laws can be made the basis of an action in another State, though objected to on the ground that one State will not aid in enforcing the penal laws of another. (Spencer *v.* Rockway, 1 Hamm., (1 Ohio,) 259.) The same rule is applicable to actions on judgments given for violations of local police regulations or for any other local causes of action. (State of Indiana *v.* Helmer, 21 Iowa, 370; Healy *v.* Root, 11 Pick., 390.) In all such cases no inquiry will be made in relation to the facts preceding the judgment, to ascertain whether the original action would have been enforced by the court now called upon to enforce the judgment. A debt due to the estate of a deceased person, if sued upon and recovered by an administrator, is, in law, the debt of him who recovers it and in whose name the judgment is rendered. He holds the legal title, subject only to his trust as adminstrator. He may sue upon the judgment in his own name without describing himself as administrator, and may, therefore, pursue the judgment defendant by an action on the judgment in a different State than that in which the letters of administration were issued. (2 Term. R., 126; 1 Pet., 686; 16 Mass., 71; 21 Mo., 227; 27 Verm., 20; 26 Tex. Supp., 305.)"

Defendant Suable in Wisconsin.

We now turn to the other defense relied on in the plea demurred to, to wit, that the defendant corporation is an artificial person, so local in its nature and so destitute of interstate functions, purposes, and franchises, and so fettered and shielded by the statutes giving it existence, as that it is inaccessible, as a defendant, by the processes of the courts of other States, under the statutes of such other States providing for service of process upon foreign corporations doing business in the State where the suit is brought. We confess our inability to derive from the language of this first plea precisely what is relied upon as giving this particular corporation exemption from liability

to suits which other corporations doing business in Wisconsin are by her laws made subject to.

We have given the wording of the plea in full, and in an attempted analysis, and can only say, regarding this feature of the plea, that it seems to proceed upon some vague idea that it, by the laws of Louisiana, was created only to make fire insurances, and not, as alleged, to do interstate business; and because it recorded and published the nature of its charter, and because that charter did not give consent to its migration to or doing business in other States, that, therefore, it, unlike all other similar foreign corporations, is invulnerable, and cannot be sued in another State, although it does, in that other State, fire-insurance business through agents there residing, and has thus placed itself in a position wherein, by the laws of that State, it is made answerable to actions, touching its business, under the laws of such States.

The plea discloses absolutely nothing which distinguishes the liability of this corporation from the liability of corporations against which suits have been, by this court, sanctioned as maintainable in States other than the State of its domicile.

Nor does the plea point out any fact that takes this corporation out of the class "citizens of another State," if *any* corporation aggregate, organized for commercial or business purposes, comes within that description.

We proceed, therefore, to state, first of all, what is held by the courts of Wisconsin regarding the liability to be sued in Wisconsin, which is created by her laws, as against foreign corporations doing business in Wisconsin. After doing this we shall give a reference to the rulings of this court upon the same general subject.

In introducing these two classes of authorities, to wit, the interpretation, by the Supreme Court of Wisconsin, of her own statutes, and the interpretation put by this court upon the constitutional provision regarding commerce be-

tween the States and other like principles of interstate law, two things must be carefully premised touching the bearing of these authorities upon the issue raised by the demurrer. One is that the plea demurred to bases itself upon the legal idea that this particular corporation is not a "citizen of another State" within the sense of these words as found in section 2, article 3, and in articles XI and XIV of the amendments, and in section 687 of the Revised Statutes of the United States; and hence that no *possible* state of legislation, in Wisconsin, touching suits against foreign insurance companies, and touching the state of their business and agency, can make a suit in Wisconsin against such foreign corporation possible; and that hence, also, no averment was needed in this first plea regarding the State of Wisconsin's statute, or the state of defendant's business in that State, to make its plea of non-citizenship of another State, a good plea.

The other thing that must be premised is that the other and independent defense set up in this first plea must proceed upon the idea that, if defendant might, under possible conditions of legislation, agency, and business in Wisconsin, be suable there, yet since this court judicially knows the condition of Wisconsin's public statutes, (1 Greenl. Ev., sec. 6, p. 10, 13th Ed., and cases in note 3,) and since the plea avers defendant to be a corporation having its habitat in Louisiana alone, and one without interstate franchises and objects, therefore the non-suability of defendant in Wisconsin is made out by simply averring what kind of a charter defendant has, and without any averment as to its business and agency in Wisconsin.

The idea of this element of the plea must be that the state of these Wisconsin laws, judicially taken notice of by the court, is such that no possible state of defendant's business in Wisconsin, or of its agencies there, can make defendant suable in Wisconsin.

Proceeding on this assumption, this first plea wholly

omits to make any averment negativing its having such agencies and doing such business in Wisconsin as to make it suable there.

It is these two elements of this first plea that make here appropriate the two classes of authorities about to be presented, to wit, those that interpret the statutes of Wisconsin in force at the time of, and before, the date of the judgment here sued on, and those, by this court, interpretative of those principles of law which determine when a corporation may be sued in a State foreign to that of its habitation.

We now present to the court the decision of the Supreme Court of Wisconsin in the case of the State of Wisconsin against the United States Mutual Accident Association, recently decided.

The facts of the case were as follows:

This is an appeal from an order refusing to set aside the service of summons in this action, the defendant having appeared specially and for that purpose only. The sheriff's return indorsed upon the summons was to the effect that on April 10th, 1886, at Fort Howard, Brown county, Wisconsin, he served the within summons upon the within-named defendant, personally, by then and there delivering to and leaving with C. Bombach, a resident and citizen of this State, personally, he, the said Bombach, being then and there an agent of the said defendant, a true copy thereof. From the affidavit upon which the motion was based, and the affidavits and proofs used in opposition to the same, it appears, in effect, that the defendant was, at the several dates herein mentioned, a foreign insurance corporation, previously organized under the laws of the State of New York, and having its home office at No. 320 Broadway, in the city of New York; that its business was that of receiving applications for and issuing accident insurance policies upon the principles of mutual insurance. That it had never been admitted or licensed to transact business of accident insurance in this State, or had never designated or appointed any attorney or agent in this State, for the service of process in actions in this State against the

defendant. That said C. Bombach has been a resident of Fort Howard, in this State, since September 10th, 1883. That he commenced soliciting insurance for the defendant in February, 1885, and continued to advertise and solicit such insurance until the commencement of this action. That during that time he received from the defendant from time to time printed matter for use and advertising purposes, including printed forms and rate books for his use in soliciting and taking applications for insurance in the defendant company. That during such time of his soliciting such insurance he took two applications, to wit: one from John Nelson and another from Frank Winding, from each of whom he collected at the time of taking such applications five dollars, from which he retained a commission of three dollars, and transmitted the balance, together with such applications, to the defendant at its said home office, and in due course of mail received from the defendant policies of insurance issued by it insuring said Nelson and Winding respectively, and which policies were delivered to them respectively by said Bombach. That no part of the money so sent to the defendant had ever been returned. That during said time said Bombach was so engaged soliciting insurance for the defendant, he advertised said business by posting up and distributing the circulars and printed matter sent to him by the defendant for that purpose.

The following is the full opinion of the court:

Are the facts stated such as to make the service on Bombach good as against the defendant? In our judgment they are. The defendant is a foreign accident insurance corporation. It never procured a license to do business in this State as required by the statutes, sections 1220 and 1953, R. S. It is provided by section 2637, R. S., that actions against corporations shall be commenced in the same manner as personal actions against natural persons. The summons, etc., shall be served, and such service held of the same effect as personal service on a natural person, by delivering a copy thereof as follows: * * * 9. If against any insurance corporation not organized under the laws of this State, to the agent or attorney thereof having authority therefor by appointment under the provision of

section 1915 or section 1953, *or to any agent* of such corporation within the definition of section 1977 in the State. Here the summons could not have been served on the defendant by delivering a copy thereof to the agent or attorney appointed by the defendant under the provisions of section 1915 or section 1953, since no such appointment was ever made. It follows that such service could only be made by delivering such copy to an agent of the defendant, within the definition of section 1977, R. S. By that definition whoever solicits insurance on behalf of any insurance corporation, or transmits an application of insurance or policy of insurance to or from any such corporation, or who makes any contract of insurance, or collects or receives any premium for insurance, or in any manner aids or assists in doing either, or in transacting any business for any insurance corporation, or advertises to do any such thing, *shall be held an agent* of such corporation to all intents and purposes, and the word agent whenever used in chapter 89, R. S., shall be construed to include all such persons. (Section 1977 R. S.) The several things thus enumerated are connected by disjunctives, so that the doing of any of them by Bombach would have made him the agent of the defendant within the definition. (*The State* v. *Farmer*, 49 Wis., 459.)

The facts stated show that he did every one of them himself, unless it was to make the contract of insurance mentioned; and the facts stated show that he aided and assisted in making each of them, which, of itself, was enough to make him such agent within the definition. As to the commencement of actions, or service of process upon foreign insurance corporations, this is in no respect changed by chapter 240, L. 1880, notwithstanding section 5 of that act is nearly in the same language of section 1977, R. S. It simply makes it a misdemeanor to act as such agent otherwise than as prescribed. This was fully considered and determined in *The State* v. *The Northwestern Endowment & Legacy Association of Minnessota*, 62 Wis., 176–7. But here Bombach received a commission on each of the policies mentioned as issued by the defendant, and hence the question of his action "gratuitously," there considered, is not here involved. By receiving and retaining such applications and premiums, and then issuing to the respective benefiaries policies thereon, and then sending the

same to Bombach for delivery, the defendant thereby ratified his agency. If the argument of counsel to the effect that section 1977 only relates to agents of such foreign insurance companies as are duly licensed to do business within the State is sound, then there would be no possible way of commencing an action against an unlicensed foreign insurance company doing business in this State in violation of law. In other words, such construction would reward such foreign insurance companies as refused to pay the requisite license fee, by enabling them to retain the license money and then shielding them from the enforcement of all liability, whether on their contracts or otherwise, in the Courts of Wisconsin. Such construction would defeat the whole purpose and scope of the statute. Besides, such construction would restrict the application of the section wholly to home insurance companies and such foreign insurance corporations as procured the requisite license, whereas the language of the section is "any insurance corporation," "any contract of insurance," "any premium for insurance," "any business for any insurance corporation" and then enlarges the word "agent" whenever used in other portions of the chapter so as to include "all such persons" as are therein described. The chapter evidently applies to foreign insurance companies not having procured such license, as well as those who have. Thus section 1952 applies to "every life or accident insurance corporation doing business in this State * * * upon the principle of mutual insurance." Section 1953 applies to "every life or accident insurance corporation not organized under the laws of this State." Section 1954 applies to "every life or accident insurance corporation doing business in this State." Manifestly it was not the intention of the legislature that the right of service of process upon foreign insurance companies doing business in this State should be dependent upon their first taking out a license. The courts of other States have taken a similar view of similar statutes. *Gibb* v. *Queens Insurance Company*, 63 N. Y., 114; *Pope* v. *Terre Haute, C. & M. Co.*, 87 *N. Y.*, 137; *Osborn* v. *Shawmut Ins. Co.*, 51 Vt., 278; *McNichol* v. *U. S. M. I. A.*, 74 Mo., 457; *Swift* v. *The State of Delaware*, 25 A. L. Reg., 594; *Thoneux, Simon & Co.* v. *Honkong & 3 B. C.*, L. R., 33 Ch. Div., 446.

Foreign insurance companies are not compelled to do

business in this State. If they voluntarily choose to do so, however, they must submit to such conditions and restrictions as the legislature may see fit to impose. *Fire Department of Milwaukee* v. *Helfenstein*, 16 Wis., 136. *The State ex rel Drake* v. *Doyle*, 40 Wis., 176. *In Paul* v. *Virginia*, 8 Wall., 168, a person having acted as an agent of an insurance company doing business in that State without a license, under a similar act, was convicted and fined under the statute, and it was held that there had been no violation of section 2, Art. 4, Con. U. S., providing that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States;" nor of section 8, Art. 1, giving to the Congress the power "to regulate commerce with foreign nations and among the several States." In that case Mr. Justice Field, speaking of foreign insurance companies for the whole court, used this significant language: "Having no absolute right of recognition in other States, but depending for such recognition and enforcement of its contracts upon their assent, it follows as a matter of course that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporations entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion." (Page 181.) This language was expressly sanctioned by the same learned court in *Ducat* v. *Chicago*, 10 Wall., 410; *Liverpool Ins. Co.* v. *Massachusetts*, 10 Wall., 566, and in the more recent case of *Philadelphia Fire Association* v. *New York*, 119 U. S., 117–8. The same language was quoted approvingly in the opinion of this court in the *State ex rel Drake* v. *Doyle*, *supra*. (Pages, 197–8.) From these decisions it appears that by voluntarily doing business in the State the defendant voluntarily submitted itself to the laws of the State. From them it further appears that the question of interstate commerce is in no way involved in such a case, and hence it is distinguishable from *Cooper Manufacturing Co.* v. *Ferguson*, 113 U. S., 727, and other similar cases. The defendant's right to impeach the sheriff's return by other evidence includes plaintiff's right to support such return by similar evidence. We conclude that the court got

jurisdiction of the defendant by the service upon Bombach. The question, however, is not before us as to just what subject matter such jurisdiction may extend. It is enough to know that there may be cases to which such jurisdiction extends. *Gauser* v. *Fireman's Fund Ins. Co.*, 25 N. W. R. Minn., 943, and cases there cited. *Ehrman* v. *Tutonia Ins. Co.*, 1 McCrary, 123; *Merchants' Manufacturing Co.* v. *Grand Trunk R. R. Co.*, 13 Fed. Rep., 358; *Gray* v. *Tuper Sleeve Pully Works*, 16 Fed. R., 437.

The order of the Circuit Court is affirmed.

We also refer the court to State *v.* Endowment Insurance Company of Minnesota (62 Wis., 174), which is a case also interpretative of the statutes involved in this case, in which the holdings are in substance like those in the last preceding case, and is a case holding, also, that section 5 of chapter 240 of Laws of 1880 does not repeal the ninth paragraph of section 2637 of the Revised Statutes of Wisconsin.

These decisions of the Supreme Court of Wisconsin cover the entire subject-matter of the scope and effect of the Wisconsin statutes, and to the force of what the court there says we can add nothing by any argument.

The effect of these Wisconsin decisions is to hold that foreign insurance companies doing business in Wisconsin through agents in that State, though not licensed, and though the foreign company omits to procure license, as required by sections 1220 and 1953, are yet suable in Wisconsin. And this conclusion is reached by the court in full view of all the legislation of Wisconsin on the subject and of the decisions of this court in regard to when a foreign corporation consents to be sued in a State away from its residence.

Decisions of the Courts as to Suits against Foreign Corporations.

We now turn to the decisions of this court upon the two questions above indicated, which are supposed to be pre-

sented by the demurrer, namely, the question whether this corporation, under the averments of the plea, is a "citizen of another State," within the sense of these words in section 2, article 3, and in section 687 of the Revised Statutes; and, second, whether the defendant doing business in Wisconsin, under or in the face of the statutes of Wisconsin, has assented to being there sued.

That a corporation aggregate created by and transacting business in a state, is to be deemed a citizen of that State for all the purposes of suing and being sued, by citizens of other States, in the courts of the United States, is, of course, the settled law of this court.

The present doctrine of this court upon this subject is stated in Paul *v.* Virginia, 8 Wall., 178, where the court, after stating that—

"In the early cases, when this question of the right of corporations to litigate in the courts of the United States, was considered, it was held that the right depended upon the citizenship of the members of the corporation and its proper averment in the pleadings"—

Adds these words:

"In later cases this ruling was modified, and it was held that the members of that corporation would be *presumed* to be citizens of the State in which the corporation was created, and where alone it had any legal existence, without any special averment of such citizenship, the averment of the place of creation and business of the corporation being sufficient; and that such presumption *cannot be controverted* for the purposes of defeating the jurisdiction of the court."

And the court cites—

Railroad Co. *v.* Letson, 2 How., 497.
Marshall *v.* Railroad Co., 16 How., 314.
Drawbridge Co. *v.* Shepard, 20 How., 233.
Railroad Co. *v.* Wheeler, 1 Black., 297.

This doctrine has been repeated, by this court, in the same words, in numerous cases, as, for example, in Steam-

ship Company *v.* Tubman, 106 U. S., 120, 121, where the cases are cited.

The only question left, therefore, regarding the point as to whether the defendant, for the purposes of being sued, is a citizen of Louisiana, is this, namely, whether there is any *distinction* between the liability of a corporation to be sued in the Circuit Courts of the United States, as a "citizen of another State," under the laws defining the jurisdiction of the Circuit Court, and such corporation's liability to be sued, as a citizen of another State, under the constitutional provisions and statutes defining the original jurisdiction of this court, where such original jurisdiction is given in suits by a State against citizens of other States. We submit there is no distinction, which is applicable to the present case, in this regard.

In Pennsylvania *v.* The Wheeling Bridge Company, 13 How., 518, the State of Pennsylvania sued a foreign corporation of Virginia under the original jurisdiction of this court, and the jurisdiction was maintained.

The same case was again in this court in 18 How., 429, where the court held that the act of Congress of August 31, 1852, legalized the bridge, and superseded the effect of the former decree of this court declaring the bridge a nuisance.

We may remark, in passing, that this is a case where the original jurisdiction of this court was held to include actions and suits for *torts*, as distinguished from suits *ex contractu*.

In Wisconsin *v.* Duluth, 96 U. S., 379, this court entertained, as coming under its original jurisdiction, the suit of Wisconsin against a corporation foreign to the State of Wisconsin, to wit, Duluth, a corporation of the State of Minnesota, the suit being brought under the clause giving this court jurisdiction, where a State is plaintiff against the citizens of another State. In that case the Northern Pacific Railroad Company was made defendant along with Duluth, but it was dismissed before the hearing, and the court was not required to decide whether its original jurisdiction

would extend to the Northern Pacific Railroad Company, a corporation created by act of Congress; but the court maintained the jurisdiction against Duluth as being a "citizen of another" State than the State of Wisconsin, but dismissed the bill with costs, because the court held that it had no authority to prescribe the manner in which work, being done under the authority of a law of Congress, should be carried forward.

And see opinion of Justice Miller in same case—2 Dillon, 406—where it is held that the Supreme Court *alone* of the federal courts, has this jurisdiction.

In Pennsylvania *v.* Quicksilver Company, 10 Wall., 553, a suit was brought by Pennsylvania against a corporation sued as an alleged citizen of California. The court, after reciting the provisions of the Constitution, and of the thirteenth section of the Judiciary Act, (now section 687 of the Revised Statutes,) says:

"A State, therefore, may bring a suit by virtue of its original jurisdiction against a citizen of another State, but not against one of her own; and the question, in this case, is whether it is sufficiently disclosed in the declaration that this suit is brought against a citizen of California. And this case turns upon another question, and that is, whether the averment there imports that the defendant is a corporation *created by the laws* of that State; for unless it is, it does not partake of the character of a citizen within the meaning of the cases on this subject."

And the court held that the averment, in the declaration, which was simply that the Quicksilver Mining Company was a body politic in the law, doing business in the State of California, was not equivalent to an averment that the corporation *was created by or under the laws of California*, and hence refused to entertain the jurisdiction; the court, however, distinctly holding that, had the averment been sufficient, the jurisdiction would have been complete.

If the case at bar can be distinguished, on the point of

the citizenship of the defendant, and of its liability to be sued as the citizen of another State under the original jurisdiction of this court, from the cases now cited, we are unable to perceive wherein that distinction is to be found; and we will await further discussion of the point to hear from the defendant's counsel.

We now, therefore, turn to the question whether or not the public laws of Wisconsin, of which this court will take judicial notice, bring the defendant within the class of cases where this court has held that suits may be maintained against foreign corporations, away from the State of the residence of the corporations, and in States where, by doing business, they consent to be sued. It would be a useless extension of this brief to consider, in detail, the large number of cases decided by this court upon this point.

The general doctrine of this court, upon this subject, may be indicated by a quotation from the language of the court in Insurance Company *v.* Woodward, 111 U. S., 146, where the court says:

"But the reason why the State, which charters a corporation, is its domicile in reference to debts which it owes, is because there only can it be sued or found for service of process. This is now *changed* in cases like the present; and in the courts of the United States it is held that a corporation of one State, doing business in another State, is suable in the courts of the United States established in the latter State if the laws of that State so provide, and in the manner provided by those laws."

The court citing—

Lafayette Insurance Company *v.* French, 18 How., 404.

Railroad Company *v.* Harris, 12 Wall., 65.

Ex-parte Schollenberger, 96 U. S., 369.

Railroad Company *v.* Koontz, 104 U. S., 5–10.

In the case of St. Clair *v.* Cox, 106 U. S., 350 *et seq.*, this court reviews the state of the law upon the subject of

the suability of a corporation in other States than the State of its creation and principal domicile, notices the inconvenience of the old doctrine, (that they could only be sued in the States of their principal residence,) owing to the great increase of corporation transactions away from the States of their residence, and holds that, wherever a corporation does business in States other than its home, and where this business is done under laws of the State providing for the bringing of suits against the corporation in such foreign State, and for serving process upon its agents, there the suit may be maintained.

The court says (p. 355):

"There would seem, therefore, to be no sound reason why, to the extent of their agency, they (the agents of the foreign corporations) should not be equally deemed to represent it (the corporation) in the States for which they are respectively appointed, when it is called to legal responsibility for their transactions."

The court further says (106 U. S. R., 356):

"A corporation of one State cannot do business in another State without the latter's consent, express or implied, and that consent may be accompanied with such conditions as it may think proper to impose. As said by this court in Lafayette Insurance Co. *v.* French, 'These conditions must be deemed valid and effectual by other States and by this court, provided they are not repugnant to the Constitution or laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defense.'

"The State may, therefore, impose as a condition upon which a foreign corporation shall be permitted to do business within her limits that it shall stipulate that, in any litigation arising out of its transactions in the State, it will accept as sufficient the service of process on its agents or persons specially designated; and the condition would be eminently fit and just. And such condition and stipulation may be *implied* as well as expressed. If a State permits a

foreign corporation to do business within her limits, and at the same time provides that, in suits against it for business there done, process shall be served upon its agents, the provision is to be deemed a condition of the permission; and corporations that *subsequently do business in the State are to be deemed to assent to such condition as fully as though they had specially authorized their agents to receive service of the process.*"

In *Ex-parte* Schollenberger (96 U. S., 369) this court, in commenting upon the doctrine laid down in the case of Railroad Company v. Harris (12 Wall., 65), places the suability of a corporation, in a jurisdiction foreign to that of its creation, upon the distinct ground that where the corporation does business in the foreign jurisdiction, when a statute exists authorizing a suit to be brought in such foreign jurisdiction, against corporations doing business therein, then and thereby the corporation *consents* to being sued in such foreign jurisdiction.

On page 376 this court thus comments upon the language of the case in 12 Wall., 65 (*supra*):

"The language of the court, speaking through Mr. Justice Swayne, is: 'It (a corporation) cannot migrate, but may exercise its authority in a foreign territory *upon such conditions as may be prescribed by the law of the place.* One of these conditions may be that it shall consent to be sued there. If it do business there, it will be *presumed to have assented,* and will be bound accordingly.' Then, after an examination of the statute granting the right to extend the road, it was said (p. 84): 'We entertain no doubt that it made the company liable to suit where this suit was brought, in all respects as if it had been an independent corporation of the same locality.' This language was cited with approbation, and adopted as a correct exposition of the law, by Mr. Justice Field, speaking for the court, in Railway Company *v.* Whitton, 13 Wall., 270:

"Applying these principles to the present case, there cannot be any doubt, as it seems to us, of the jurisdiction of the Circuit Court over these defendant companies."

In Railroad Company *v.* Koontz (104 U. S., 10) the court says:

"It is well settled that a corporation of one State doing business in another State is suable where its business is done, if the laws make provision to that effect; and we have so held many times."

Citing Insurance Company *v.* French, 18 How., 404.
Railroad Company *v.* Harris, 12 Wall., 65.
Ex-parte Schollenberger, 96 U. S., 369.

We beg to be permitted to re-state, and to impress upon the attention of the court, the precise substance of what we deem the controlling point raised by the demurrer. It is this: The last part of paragraph 9, section 2637, in defining how process may be served in Wisconsin on corporations not organized in that State, enacts that the service may be made, amongst other ways, by delivering the summons and notice—

"*To any agent of such corporation within the definition of section* 1977."

The definition found in section 1977 we have given above. Its substance is to make every one an agent, within the meaning of the chapter, who either does any business regarding effecting insurance in Wisconsin or transmitting applications therefor, or makes any contract of insurance, or receives any premiums for insurance, or who, in any manner, aids in either of these, or in transmitting any business for insurance companies, or advertises to do any such thing. Such, in substance, is the legislation on which the possibility of the jurisdiction of the court, in rendering the judgment here sued on, in law depends. In disposing of the issue raised by the demurrer the court cannot, of course, inquire what kind of an agency was held by the persons who were served in said action, or as to how much business they, in fact, transacted. The court can, at most, only know that they were not

agents licensed under the laws of Wisconsin. Hence if, as a matter of law, it was *possible* that an agent unlicensed under said laws of Wisconsin may yet be an agent of the defendant in such sense as that the agent may be served with process, so as to give the court jurisdiction of the defendant in Wisconsin, then, so far as this point is concerned, this court must treat the court rendering the judgment as having jurisdiction, and the demurrer must be sustained. And these considerations bring us to the only question left to be, on this point, considered, namely, whether, when paragraph 9 of said section 2637 authorizes service to be made on such an agency as that defined in said section 1977, and this, although the agent was not licensed under the laws of Wisconsin, in such case, and giving this effect to the statutes, would this render such statute (to quote here the language of this court in 106 U. S., 356) "repugnant to the Constitution or laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defense?"

The authorities gone over establish our proposition that these provisions of the Wisconsin law are not inconsistent with the Constitution, or with public law, or with the mutual rights of the States.

It may not be amiss, however, upon a question of this importance to submit to the court a further reference to authorities in the Circuit Courts of the United States, and in the courts of the States, in further enforcement of the point that these provisions of the Wisconsin laws, for said method of bringing foreign corporations into her courts to answer touching business done in the State are valid.

In Manufacturing Company *v.* Railway Company, (13 Fed. Rep., 358,) in the Circuit Court of the United States for the Southern District of New York, in 1882, it was held (in accordance with Insurance Company *v.* French, 18

How., 404; Railway Company *v.* Harris, 12 Wall., 1881; *Ex parte* Schollenberger, 96 U. S., 369) that the fact of doing business in the State is an *assent* to the service of process upon agents there, in suits against foreign corporations; and the court there cites a long line of authorities holding that, even in the absence of statutes of the State authorizing such mode of service, suits may be maintained against foreign corporations in States where they engage in business, by service of process on those doing the business.

In Mohr and Mohr Distilling Company *v.* Insurance Company, (12 Fed. Rep., 474,) decided in the Circuit Court of the United States for the Southern District of Ohio, by Justice Matthews, in June, 1882, the court reasserted the doctrines of this court above cited, and the court there indicated that the consent implied from the doing of business, by a foreign corporation, in a State having laws providing for suits in the State where the business is done, is *not limited to causes of actions arising within the State, but extends to all transitory actions.*

In Gray *et al. v.* Tabor Sleeve Pully Works, (16 Fed. Rep., 436,) the suit was in the Circuit Court of the United States for the Western District of Pennsylvania, decided in 1883; opinion by Acheson, J. In that case the same doctrines are reasserted, and the additional point is decided which is indicated by the following sentence from the opinion of the court, page 443:

"Suits may be instituted against a foreign corporation by service of process conformably to the act of 1849 (Pennsylvania), *notwithstanding it has failed to establish a place of business in the State and appoint an agent upon whom service may be made, agreeably to the State Constitution and act of April* 22, 1872."

The court cites Hagerman *v.* Empire State Company (97 Pennsylvania St., 534).

The State decisions are innumerable which are to the same effect.

We have already cited the case of Wisconsin *v.* Northwest Endowment and Legacy Association (62 Wis., 174).

The case of Gibbs *v.* Insurance Company in 63 N. Y., (1875,) where the opinion is by Judge Folger, is to the same effect as the foregoing, but is valuable as presenting an elaborate review of the English and American authorities upon the general subject as to when a service upon an agent of a foreign corporation is not violative of the principles of the public law or of natural justice.

At the end of the opinion, page 131, Justice Folger alludes to the fact that Insurance Company *v.* French (18 How., 404) was called to his attention after the preparation of his opinion, and the Justice remarks that this case of French *goes further than the court went in the case of Gibbs.* The Justice cites, in addition to the cases appearing in the body of the opinion—

Copen *v.* Adamson, Law Rep., 9 Exchequer, 345.
Schibsby *v.* Westenholz, Law Rep., 6 Q. B., 155.

The case of Sadler *v.* Insurance Company, (60 Miss., 391,) decided in 1882, is of value, in the present case, as presenting statutes quite equivalent to those of Wisconsin upon this subject, and also as indicating that the omission of the foreign company to take out license does not exempt it from liability in the foreign State where it does business. The case shows that statutes are not against natural justice or public law which broadly and generally make foreign corporations liable in the States where their business is done by any agent whose acts have been adopted as valid by such foreign corporation.

The case of Insurance Company *v.* Highsmith, (44 Iowa, 330,) decided in 1876, is one where the court holds that the service need not be upon the *general* agent of the foreign

corporation, but may be upon any insurance agent who solicits risks and forwards them to the company.

In Osborne *et al. v.* Insurance Company, (51 Vermont,) decided in 1878, the same doctrine was asserted, and it was also held that it made no difference that the plaintiff was not a resident of the State where the Insurance Company did business, and where the suit was brought.

The case of McNichol *v.* United States Mercantile Reporting Agency, (74 Missouri,) decided in 1881, contains a valuable review of the authorities upon this subject, and sustains alike all the principles which are so often asserted by this court, that laws which provide for service of process on recognized agents of a foreign corporation are not *against public law, or against justice, or against the Constitution*, and are reasonable, and have been adopted because citizens doing business with foreign corporations, if obliged to go to the State of the residence of the corporation, would be without redress. (See pages 474 *et seq.*)

These cases, and others that might be cited, firmly establish, as the doctrine of this court, that wherever the laws of a State provide that foreign corporations, doing business in the State, shall be suable in such State by process served in a prescribed manner, there the doing of business in such State is a consent to be sued according to the laws existing at the time the business is done; and hence this court cannot fail to perceive that it was *possible* for the courts of the State of Wisconsin to acquire jurisdiction of the defendant for the purpose of rendering the judgment which is sued in this case. Hence the first plea discloses no facts showing that it was not possible for the court to acquire the jurisdiction which was exercised in rendering said judgment; and the plea, therefore, is bad, in failing to disclose any facts showing that no jurisdiction *in fact* existed.

Only one additional point need to be here noticed:

It may be argued that the record discloses that the defendant never took out license to do business in Wisconsin,

as provided by her statutes. This fact does not appear *in the record in this case*. The showing made by the plaintiff for leave to file the present petition *is no part of the record of the present case*. The record proper begins with the leave of this court to file the declaration, and with its filing. Anything *outside* of what is disclosed subsequently to the leave of this court is *de hors* the record.

But, assuming that the court knows that the defendant never took out license, and that the judgment below was for forfeitures incurred on account of doing business in Wisconsin in defiance of her laws, then, still, that fact does not affect the present issue.

Upon the point that the defendant is still liable for the penalties incurred by doing business in Wisconsin without complying with the license laws of the States, we refer this court to what is said upon this point in the opinion of the court (*supra*) in the case of Wisconsin *v.* Accident Insurance Company. (We think this case is not yet reported.) The argument of the court there found seems to us conclusive upon the subject.

But to the force of that case we add the following:

In Ithica Fire Department *v.* Beecher (99 N. Y., 429) the court held that a corporation cannot avoid liability for penalty for doing business in a State where license is a prerequisite by making the contract *elsewhere than in the place where the contract is to operate.*

In the case of Ehram *v.* Teutonia Insurance Company (1 McCrary, 123) the action was to recover a loss on a fire policy issued by the defendant, a Louisiana insurance company doing business in Arkansas. The defendant made a special appearance in the case for the purpose of abating the writ, and alleging that the defendant had never taken out any authority, as provided by the Arkansas act of February 27, 1875, and that defendant never complied with those laws in regard to duties and liabilities of foreign insurance companies, and that they had not been served

with process, and asked that the writ be abated. There the opinion is by Justice Caldwell. It contains a valuable review of the decisions of this court and other courts bearing upon this whole subject; and the court refused to abate the writ, and held that, although the defendant had never taken out license iu Arkansas, yet it was suable in that State, because they there did business. Held, also, that the policy of insurance was valid, although no license had been taken out in Arkansas in obedience to her statutes.

The language of the court on this point is (p. 127):

"The objects sought to be attained by this act are security and protection to policy-holders and revenue to the State, but chiefly the former. By failing to comply with the requirements of the act, the companies, and their agents and brokers, render themselves liable to the *penalties denounced by the act;* but such failure does not affect the validity of the policies issued by them, or in any manner operate to the prejudice of the policy-holders."

The court cites on this point—

Insurance Co. *v.* McMillan, 24 Ohio St., 67.
Clay Fire Insurance Co. *v.* Salt Co., 31 Mich., 346.
Insurance Co. *v.* Walsh, 18 Mo., 229.
Lamb *v.* Rowser, 7 Bissell, 315, 372.
Insurance Co. *v.* Matthews, 102 Mass., 221.

In the light of these authorities, we submit that it is conclusively established that even if this court, in trying this demurrer, can look outside of the record proper, and can see that the court below rendered the judgment, which is the foundation of the present action, for penalties incurred by a company which had never taken out license in the State of Wisconsin, yet that fact is immaterial, because it did not deprive the court below of jurisdiction to render the judgment which was rendered. This is so, because the business done in the State was valid, and operated as assent to be sued in Wisconsin.

Any further discussions of this demurrer we will leave to oral argument, if opportunity for oral argument shall be afforded.

What we have gone over we believe covers the body of the case, as made by the demurrer, in all its parts.

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Attorneys for Wisconsin.

127-265

Supreme Court of the U. S.

October Term, 1886.

THE STATE OF WISCONSIN,

vs.

THE PELICAN INSURANCE COMPANY OF NEW ORLEANS.

JOHN A. CAMPBELL,
For Defendant.

JOHN MURPHY & CO., PRINTERS, BALTIMORE.

Supreme Court of the U. S.

October Term, 1886.

THE STATE OF WISCONSIN,

vs.

THE PELICAN INSURANCE COMPANY OF NEW ORLEANS.

Statement of the Case.

I.

This suit stands on the docket of original cases, instituted by the plaintiff, a State, against the defendant, a corporation of another State. The plaintiff seeks to enforce a judgment rendered in the Circuit Court of Dane county, Wisconsin, against the defendant upon a demand for penalties and forfeitures imposed by that State in Section 1920, Chapter X of the Revised Statutes of the year 1878. These forfeitures affect the defendant as a Fire Insurance Company, charged with doing business in Wisconsin without complying with the Statute. The judgment was rendered upon a default, the defendant failing to appear or answer. The suit in this Court is for the judgment, as a debt not collected.

II.

The defendant has appeared in this Court and answered to the action. The defendant answers that it is a private corporation organized under a Statute of Louisiana to affect fire insurances pursuant to Sections 683 and 687 of the Revised Statutes of Louisiana. That the domicil of the Company has ever been in New Orleans and has never been in Wisconsin for any purpose. That the Company had never had an agency in Wisconsin nor carried on a business in that State or was at any time subject to the jurisdiction of that State. The defendant denies the adequacy of the judgment to maintain this action because of the lack of jurisdiction of the State of Wisconsin and of her Court to render it, or to enforce it in this Court; and denies the process to be available for the purpose, for that the persons denominated agents were not agents and not competent to do any act for the defendant. The plaintiff has demurred to the answers except in a single instance. There is an issue on the plea *nul tiel* record.

Points, Authorities and Arguments.

I.

The Section 687 of the Revised Statutes of the United States invests this Court with original jurisdiction of controversies of a CIVIL NATURE, between a State, and citizens of other States or aliens.

The Court does not have jurisdiction between a State and its own citizens. The terms of the Statute have a very precise reference to natural persons who have been described with exactness and their status determined in the 14th Amendment to the Constitution. A citizen of the United States is a natural person born or naturalized within the United States. He can become a citizen of a State by fixing his domicil in that State.

The judgment rendered in favor of the plaintiff shows that the recovery consists of forfeitures imposed in a statute of the State upon a class of offenders against the State, for a transgression of

the *penal* law of the State, respecting corporations of other States in respect to traffic within the State.

The judiciary Act of 1789 contains this limitation upon the grant and this has been re-enacted. Justice Iredell adverts to this Act in an opinion delivered in 1791. He says: The constitution is particular in expressing the parties who may be the objects of the jurisdiction in either of the three cases, but in respect to the subject matter upon which such jurisdiction is to be exercised, the word used is "controversies" only. The Act of Congress more particularly mentions *civil controversies*, a qualification of the general word in the constitution, which I do not doubt every reasonable man will think was well warranted, for *it cannot* be presumed that the general word controversies was intended to include every proceeding that relates to criminal cases, which in all instances that respect government only are uniformly considered of a local nature and to be decided by its own particular laws. Chisolm vs. Georgia, 2 Dallas, 419. Another reference was made in this Court at a later date.

The Court say: "The original jurisdiction of the Supreme Court refers to those cases in which, according to the grant of power made in the Constitution, jurisdiction might be exercised in consequence of the character of the party, and an original suit might be instituted in the Federal Court, not to those cases in which an original suit might not be instituted in a Federal Court. Of the last description is every case between a State and its citizens, *and perhaps every case in which a State is enforcing its penal laws.* In such cases the Supreme *Court cannot take original jurisdiction.*" Cohens vs. Virginia, 6 Wheat., 264. The Chief Justice in this opinion does not refer to the Judiciary Act. His opinion was confined to the text of the Constitution and the "perhaps" may be referred to the use of the word controversies only, and not to the qualification or interpretation made in the Judiciary Act. There is no qualification in the sentence which concludes the paragraph.

The Act of Congress which defines the cases to be brought hither by a State must be of a civil controversy.

', in the course of an elaborate opinion, directs his
ıe same subject. "It is a general principle," he says,
if not the customary law of nations, that no nation is
ce the penal laws of another in its own dominions.
naturally belongs to the tribunals of the nation cre-
ɔes. In a government formed like ours, where there
' sovereignty, and of course where there is a danger
m the near approach of powers to a conflict with each
l seem to be a *peculiarly safe and salutary rule that*
nt should be left to enforce its own penal laws in its

It has been expressly held by this Court that no
ıinal jurisdiction of the United States can, consistently
itution, be delegated to State tribunals, and there is
st inclination to retract this opinion. The judicial
ınion clearly extends to all such cases. No concurrent
ıed by the States because the subject matter derives
om the Constitution, and the authority to delegate it
lied."

ɔn vs. Moore, 3 Wheat., 433.

rly epoch of the history of the United States, the State
ıia asserted her own capacity to deal with the subject.
ett, an English publicist and democrat, libelled the
't of that State. He was arrested and gave a bond
ɔehavior, which he forfeited, and suit was instituted.
sed to remove the suit to the Federal Court. Chief
an denied the motion.

ɔlica vs. Cobbett, 3 Dall., 467.

ne Court of New York declined to entertain a suit by
ates in a penal matter arising under the laws of the

l States vs. Lathrop, 17 John. N. Y. R., 4.
y vs. McLeon, 12 Allen, 438.
. Bank vs. Price, 33 Maryland, 437; 14 Gray, 488;
)uffies vs. State, 7 Wis., 672.

The opinion of this Court in Flash vs. Conn., 109 U. S. 967, is to the same purport. The Court recognized that a penalty contained in the statute of another State would not be enforced by the Court.

Wharton, Conf., section 833.
Taylor, Law of Corp., 764–5.

II.

The authority to render a judgment which shall affect the rights of a citizen of a State within that State, is conferred or regulated by the supreme power of the State. Merlin says, the authority of a thing adjudged is not derived from the law of nations. It has its origin in the municipal laws of States or nations. The civil laws of a State cannot communicate the consequences of a judgment beyond their jurisdiction. One State cannot invoke the *authority* of its judgments in the tribunals of another. No State allows the execution of a foreign judgment upon the mandate of the judge who rendered it in the foreign tribunal. In respect to judgments founded upon the criminal or penal law of one State, they are entirely devoid of potency. The local character of crimes and offences against penal statutes has been admitted in the cases we have cited. A State is under no obligation, it has no moral and, we may add, no political competency to punish a foreigner residing beyond her jurisdiction, not accountable for a violation of the laws in force in that jurisdiction. This seems to be the conclusion of this Court as expressed in the very able and scrupulous opinion in the case of the Antelope, 10 Wheat., 66.

Whenever there has been a concession on this subject, it has been made from political considerations and to accomplish an occasional aim. No Code of international law has yet been adopted among the many publicists and reformers who have devoted themselves to the study.

Justice Story affirms penal laws of foreign countries are strictly local and affect nothing more than they can reach and can be

seized by virtue of their authority. A fugitive who passes hither comes with all of his transitory rights.

Story's Conf., secs. 619–620, 621.
Westlake, Intern. Law, sec. 403.

In support of this opinion he cites decisions in Great Britain and the United States. The same statement is made by the publicists on the continent of Europe. The *lex loci* must needs govern all criminal jurisdiction from the nature of the thing and the purpose of the jurisdiction.

Foelix, Droit Intern., sec. 565, p. 572.
1 Martens, Cours de Pub. Droit, 104.
2 Calvo, Droit Int., pp. 315, sec. 1162–1182.

In the proposed Code by our countryman, an eminent member of the bar of this Court, Mr. D. D. Field retains the principle upon which the world has been progressing.

Projet. Code Intern., Art. 635.
L. R., 20 Eq., 225.

We have said that there had been treaties, interstate regulations, and local regulations. Great Britain and the United States will not prosecute an offender against a law of another State. We have seen that a penal statute would not be enforced. A Prussian inculpated for an act done in a foreign State or kingdom, not penal in Prussia, will not ~~prosecute~~ involve the offender. If it be penal in Prussia, the Prussian will be prosecuted in a Court there and punished according to the Prussian law. Bavaria will punish a Bavarian for an offence against its laws, at home or abroad.

Bavaria will not surrender him to another State nor enforce the law he has infracted abroad. Russia, Norway, Saxony and other German States and some Swiss Cantons prosecute and punish crimes committed by their subjects on their soil or abroad according to their own laws. Publicists admit the essentially local character of the criminal law and upon principle the execution of judgments

rendered in a foreign tribunal will not be granted to affect person or property.

The rule in France is that a penal sentence does not extend beyond the jurisdiction of the Court which rendered it. Judgments pronounced in a criminal or correctional matter will not be enforced in France either in respect to person or property. Belgium and Holland have this rule.

2 Calvo, Droit Int., 1179.
8 Dalloz, Jurisp. Gen., p. 220, No. 26.
18 Dalloz, Jurisp., p. 141, No. 417.

This principle has been maintained by the executive department of this government in its foreign relations.

1 Wharton Dig., U. S. Int. Law, sec. 15.

III.

Wharton in his Conflict of Laws says we have seen that penal laws have no extra territorial force. The same limitation applies to foreign penal judgments, since otherwise all that would be necessary to give ubiquitous effect to a penal law would be to put it in the shape of a judgment. Judgments rendered on penal matters usually do not go beyond the frontiers.

Wharton's Conf. Laws, 2 ed., sects. 833–656, sec. 4.
De Bremont vs. Pennimon, 10 Blatch., 436.
Com. vs. Greene, 17 Mass., 515.
Hett vs. Frazier, 22 Penn., 320.
Sims vs. Sims, 75 N. Y., 466; 23 Alab., 44.
Miller vs. White, 50 N. Y., 137.

IV.

1. This Court has determined that a judgment *in personam* against a foreign corporation, to have any effect in another State, must have obtained jurisdiction over the person by the service of

process upon the corporation or a duly accredited officer or agent of the corporation within the jurisdiction of the Court.

St. Clair Co. vs. Cox, 106 U. S. 359.
Pennoyer vs. Neff, 95 U. S. 359.
Freeman vs. Alderson, 118 U. S. 185.

2. Where service is made upon an agent of the foreign corporation within the State, the defendant may still question the validity of the service, and show that the agent was not authorized to receive the process or to appear to the action in his name.

Knowles vs. Logansport Gas Co., 19 Wall., 58.
Smith vs. Woalfalk, 114 U. S., 143.
Thompson vs. Whitmore, 85 U. S., 714.

The authority of the agent must apply to the specific suit. The Court cannot, by the appointment of a *Curator ad hoc*, or special attorney, confer adequate authority.

Bond vs. Duke of Newcastle, 3 Bro., ch. 386; 2 Cox, ch. 389.
Erickson vs. Nesmith, 46 N. H., 371.
Flower vs. Foreman, 23 How., 132, 149.

The substitution of an agent for the principal must be an equivalent for the due process of law. There must be a competent officer to represent the Court and a competent agent to receive the citation or summons. The agent of the non-resident must be an authorized agent of the defendant. A statute of New York authorized service to be made upon a foreign corporation by delivering a copy within the State to the President, Treasurer or Secretary. The corporation had no property in the State, nor place of business, nor did it transact business of any sort. Service was made upon the President, who was casually in the State on his way to another State. The New York Court recognized the service as valid. The Court

say that they would not undertake to determine the effect outside of New York.

Pope vs. Manufacturing Co., 87 N. Y. R., 137.

There is an intelligent discussion of the subject in two works on private corporations, which we refer to the attention of this Court. Morawetz asserts that "Jurisdiction may be obtained over a corporation chartered by a foreign State either through service of process, or by voluntary appearance of the company by its authorized agents. It is essential in order to bind the company by a judgment thus obtained that the writ may be served, or those who enter an appearance on behalf of the company, shall have authority to represent it for this purpose. The particular agents of a corporation upon whom service can be properly made, are not necessarily constituted agents for that purpose. If a corporation is not engaged in trade, and makes no contracts in a foreign State, justice seems to require that it should not be subjected to suits in that jurisdiction, and it has been held, therefore, that under these circumstances the agents of the company have no authority to represent the company in receiving service of writs or entering a voluntary appearance. He denies that service can be made upon an officer while casually present in the jurisdiction." If a corporation open an office or habitually transacts business in a foreign State, the head officer must be deemed an agent of the company for the purpose of receiving writs or entering a voluntary appearance. These authors agree that a service made upon an officer of the corporation who casually visits the State, in no connection with the business of the non-resident corporation, is valid, and dissent from the Court in New York, in respect to a statute of that State, which has been referred to in this brief.

Morawetz, Private Corporations, 522–3.
Taylor, Law of Private Corp., 397–8–9.
L. R. 12 Chan. D., 303, also 522.
D'Arcy vs. Ketchum, 21 How. 165.
Thomson vs. Whitman, 18 Wall. 457.

V.

The Statute upon which the plaintiff in this Court recovered its judgment in its Court of general jurisdiction we have pleaded to be a penal Statute. The prosecution has been conducted in the name of the State according to the Statute. The charge of the prosecution has been confided to a public officer, and that officer is empowered to appropriate a large proportion (one-half) for expenditures, costs, &c. It is manifest that the condemnation is a punishment and not for the reparation of damage and is not made in any personal or individual interest, but in the interest of the State as the organ of the body politic for a violation of a penal Statute.

The offence is individual. The corporation is the only subject upon which it operates. The fact that this is a penal Statute is therefore manifest.

Harris, Criminal Law, 4.

Maryland v. B. & O. R. R. Co. 3rd Howard.

The Constitution of the United States has not enumerated the controversies comprised within the terms of the Constitution and the judiciary act, and over which this Court has original jurisdiction, if the plaintiff be a State. There is no cognizance of a suit against the State by the defendant or any member of the same class. Neither would the Court entertain a cause against a citizen or corporation of Wisconsin brought by that State. The controversy here is not of a civil nature. Wisconsin has prosecuted the defendant within her own Courts. She has designated the persons who shall stand in judgment in those Courts, and has condemned the corporation for a violation of her own laws.

The matter is put before this Court that the defendant has not paid the forfeitures which the State has exacted and asks the Court without further enquiry to enter here a judgment—to make the judgment executory; to grant a *pareatis*, which shall make the judgment operative throughout the United States. The claim upon this Court is for aid in the administration of the penal Statutes of

Wisconsin to the end that by the punishment of the defendant, that others may be deterred.

The jurisdiction of this Court has been denied to the States in more instances than it has been exerted in their favor upon their application. It was denied to Kentucky in the suit commenced against Dennison, Governor; to the Cherokee nation when sought for against Georgia; to Georgia in her suit against Staunton; to New Hampshire and New York in suits against Louisiana.

In these cases the Court has required that the controversy shall be of a civil nature. It does not allow a suit where the powers to be employed are of a political nature, nor where they are prerogative.

The Supreme Court will not enforce the penal laws of a State, nor command a State to perform a duty when the mode of performance is not ascertained.

In the last named cases it did not allow States to assign their privilege to maintain suits in this Court.

The Constitution has provided for the arrest of fugitives from justice, but has not provided for any compulsion upon the officers of the State. No federal machinery is afforded by the Constitution.

The experience of the country in the matter of escaping slaves would seem to be that the jurisdiction now for the first time sought for would not be wholesome, and might be mischievous and a source of discord.

The execution of the law in respect to the capture of fugitives from justice is equally difficult of administration. In the case of Kentucky vs. Dennison, the defendant answered that the offence committed in Kentucky was not regarded as an offence in the State where the fugitive found an asylum.

Suppose it be admitted that the controversy assumes a civil nature by the fact that the State has prosecuted the controversy to a judgment in her own Courts, before asking for the aid of this Court—it would operate a repeal of the Judiciary Act which denies to controversies in respect to penal laws any extra territorial effect. The limitation applies to penal judgment, for otherwise they would

become ubiquitous in their operation by the action of the State Court.

The States have a jurisdiction territorial and personal, which has for the most part, for near a century, been adequate to all purposes of promoting order and tranquillity. This jurisdiction is over all persons who are citizens of the State and who come within its jurisdiction. The statutes of Wisconsin have for their object to engross all of the traffic in certain forms of business, with which any of her citizens may become connected. They propose to confine the persons by a contract not to use the Courts of the United States, even when open to some of them. The plan of the statutes is to mould the judgments manufactured by the domestic machinery and then to export them to this Court for consumption and use. This surely cannot be done.

JOHN A. CAMPBELL,
Attorney for Defendant.

APPENDIX.

A.

STATUTES OF WISCONSIN.

Sec. 1977. Whoever solicits insurance on behalf of any insurance corporation or transmits an application for insurance, or a policy of insurance to or from any such corporation, or who makes any contract of insurance or collects or receives any premium for insurance, or in any manner aids or assists in doing either, or in transacting any business for any insurance company, or advertises to do any such thing, shall be held an agent of such corporation to all intents and purposes, and the word agent, whenever used in this Chapter, shall be construed to include all such persons.

Penalty for not making Reports.

R. S., Chap. 89, Sec. 1920, $500. And $500 for each month of neglect.

B.

SESSION LAWS OF WISCONSIN, 1880.

CHAPTER 240.

Sec. 5. Whoever solicits insurance on behalf of any insurance corporation or property owner, or transmits an application for insurance, or a policy of insurance other than for himself, to or from any such insurance corporation, or who makes any contract

for insurance, or collects any premium for insurance, or in any manner aids or assists in doing either, or in transacting any business of like nature for an insurance corporation, or advertises to do any such thing, shall be held to be an agent of such corporation to all intents and purposes, unless it can be shown that he receives no compensation for his services.

C.

SESSION LAWS OF WISCONSIN, 1885.

CHAPTER 443.

AN ACT to regulate the admission of foreign surety companies to do business in this State.

The people of the State of Wisconsin represented in Senate and Assembly do enact as follows:

Sec. 1. Any surety company incorporated and organized under the laws of any State of the United States other than the State of Wisconsin, for the purpose of transacting business as surety on obligations of persons or corporations, may transact such business in this State upon the terms and conditions imposed and with the privileges conferred upon fire insurance companies doing business in this State, and shall be subject so far as practicable to all the provisions of law applicable thereto. In action against such corporations or in an action against any insurance corporations not organized under the laws of this State, the summons and the complaint, or the summons without the complaint may be served and such service held of the same effect as personal service upon a natural person by delivering a copy of such summons and complaint or a copy of the summons without the complaint, to any person who *shall solicit insurance on behalf of any such insurance corporation or property owner*, or who transmits an application for insurance or a policy of insurance to or from any such insurance

corporation, or who makes any contract for insurance or collects or receives any premium for insurance, or who adjusts or settles a loss or pays the same for such insurance corporation, or in any manner aids or assists in doing either, or in transacting any business for such insurance corporation, or on any person who attempts to do any such thing.

Sec. 2. This Act shall take effect immediately, and all Acts and parts of Acts inconsistent herewith are hereby repealed.

Approved April 11th, 1885.

D.

SESSION LAWS OF WISCONSIN, 1885.

CHAPTER 395.

AN ACT concerning Insurance Companies, and to authorize Insurance Commissioners to sue for and collect penalties.

Sec. 1. It is hereby made the duty of the Commissioner of Insurance to prosecute to final judgment, in the name of the State, or to compromise, settle or compound every forfeiture incurred by an insurance corporation, by its failure to comply with, or for its violation of any law of the State, of which he may be credibly informed.

Sec. 2. One-half of every sum collected, paid, or received by virtue of section one of this Act, shall be paid into the State Treasury, and the remainder shall belong to the Commissioner of Insurance, who shall pay all expenses incurred in prosecuting all actions brought to enforce the judgment of such forfeitures, both in and out of the State, and shall pay all expenses incident to the collection of such forfeitures.

Sec. 3. This Act shall take effect and be in force from and after its passage and publication.

Approved April 11th, 1885. Published April 12th, 1885.